tion of the transaction of routine morning business—of H.R. 9270, a bill making appropriations for the Department of Agriculture, with time limited thereon to 2 hours and the time on amendments limited to one-half hour, to be equally divided, with the exception of any amendment dealing with a ceiling on subsidies, in which case there will be a time limitation of 1 hour on such amendment, to be equally divided. Two hours will be allotted on an amendment to be offered by Mr. BAYH dealing with a limitation on subsidies. Rollcall votes are expected.

Also on Thursday, the Atomic Energy Commission authorization may be considered.

Senators should be on notice that the Senate may proceed also on Thursday to a reconsideration of the vote on Senate Resolution 100, to provide additional employees for the Veterans' Committee, and a rollcall vote can, I think, be anticipated thereon.

To repeat, with respect to Thursday, I think it can safely be said that there will be at least one rollcall vote, certainly on the passage of the bill making appropriations for the Department of Agriculture, and there likely will be votes on amendments thereto. There may be a vote on the AEC authorization. A rollcall vote can be anticipated on any motion to reconsider the vote on Senate Resolution 100.

As for Friday, upon the completion of the transaction of routine morning business, the Senate will proceed to the consideration of H.R. 9471, a bill making appropriations for the Department of the Interior. Time will be limited thereon to 2 hours, and an agreement has been entered limiting the time on any amendment to 30 minutes.

A rollcall vote can be expected on the passage of that appropriation bill.

Also on Friday it is anticipated that the Senate may proceed to the consideration of the bill making appropriations for HUD and space sciences, and also the bill making appropriations for the Departments of State, Justice, and Commerce, in the event of which there will certainly be a rollcall vote on passage of either or both of those appropriations bills, in accordance with past practice. Moreover, if the AEC authorization is not taken up on Thursday, it may be taken up on Friday, with a possible rollcall vote thereon.

Additionally, if the Senate has not disposed on Thursday of the motion to reconsider Senate Resolution 100, which has to do with additional employees for the Veterans' Committee, the Senate may proceed to consider that matter on Friday, with an expected rollcall vote thereon.

So there will be at least one rollcall vote, in all likelihood, on Friday, and an extremely good possibility of more than one rollcall vote that day.

In recapitulation, there will be one or more rollcall votes on Wednesday, one or more rollcall votes on Thursday, and one or more rollcall votes in sight for Friday.

Does the distinguished assistant Republican leader have any question or any statement to make at this time?

Mr. GRIFFIN. No.

ADJOURNMENT UNTIL 11 A.M. WEDNESDAY, JULY 14, 1971

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 11 a.m. on Wednesday next.

The motion was agreed to; and (at 4 o'clock and 43 minutes p.m.) the Senate adjourned until Wednesday, July 14, 1971, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate July 12, 1971:

U.S. DISTRICT COURTS

Paul Benson, of North Dakota, to be a U.S. district judge for the district of North Dakota, vice Ronald N. Davies, retiring.

Spencer M. Williams, of California, to be a U.S. district judge for the northern district of California, a new position created by Public Law 91–272, approved June 2, 1970.

DEPARTMENT OF THE INTERIOR

John W. Larson, of California, to be an Assistant Secretary of the Interior, vice Carl L. Klein, resigned.

DEPARTMENT OF TRANSPORTATION

Benjamin Oliver Davis, Jr., of Virginia, to be an Assistant Secretary of Transportation, vice Willard J. Smith, resigned.

MISSISSIPPI RIVER COMMISSION

Maj. Gen. Charles Carmin Noble, [redacted] Army of the United States (brigadier general, U.S. Army), for appointment as a member and President of the Mississippi River Commission, under the provisions of section 2 of an act of Congress approved June 28, 1879 (21 Stat. 37) (33 U.S.C. 642).

HOUSE OF REPRESENTATIVES—*Monday, July 12, 1971*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Let the beauty of the Lord our God be upon us: And establish Thou the work of our hands; yea, the work of our hands establish Thou it.—Psalms 90: 17.

O God and Father of us all, who hast set us in families, and families in communities, and communities in cities, we lift our hearts to Thee praying that Thou wouldst bless our families, our communities, and our cities, strengthening every noble endeavor, stimulating every honest enterprise, and supporting every true way that leads to a greater life together in our beloved country.

Grant that we in this Chamber may be men and women of faith and courage who see above the strife of the present age and beyond the strain of these difficult days a better way of life for all our people, and may we work for it with a zeal that never ceases building on earth a brotherhood of men, based on a brotherhood of work and permeated by a brotherhood of faith.

In Thy holy name we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1828. An Act to amend the Public Health Service Act so as to establish a Conquest of Cancer Agency in order to conquer cancer at the earliest possible date.

DISTRICT OF COLUMBIA BUSINESS

The SPEAKER. This is a District of Columbia Day. The Chair recognizes the gentleman from Missouri (Mr. HUNGATE).

AMENDING UNIFORM COMMERCIAL CODE WITH RESPECT TO WAREHOUSEMEN'S LIEN

Mr. HUNGATE. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 6968) to amend the Uniform Commercial Code of the District of Columbia to make a warehouseman's lien for charges and expenses in relation to household goods stored with him effective against all persons if the depositor of the goods was the legal possessor, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The Clerk read the bill, as follows:

H.R. 6968

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 28: 7–209(3) of the Uniform Commercial Code (D.C. Code, sec. 28: 7–209(3)) is amended by inserting "(a)" immediately after "(3)" and by adding at the end thereof the following:

"(b) A warehouseman's lien under subsection (1) on household goods for charges and expenses in relation to the goods is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. The term 'household goods' means furniture, furnishings, or personal effects used by the depositor in a dwelling."

Mr. HUNGATE. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the purpose of H.R. 6968 is to amend the Uniform Commercial

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Code provisions of the District of Columbia Code to make, with respect to household goods, a warehouseman's lien for charges and expenses in relation to the same stored with him superior to chattel mortgages and conditional sales contracts.

This proposed amendment affords the warehouseman appropriate security for his storage and care of the goods, which accrue to the benefit of both the merchant and the owner of the goods, without fear of jeopardizing the merchant.

PRESENT LAW

Under the current provisions of the District of Columbia Code title 28, section 7–209), in the event that a warehouseman or mover receives household goods for storage or moving, and the person depositing the goods defaults on storage charges, the warehouseman's right or lien to proceeds in any sale or auction of the goods is subordinate to prior recorded liens on the goods.

On the other hand, merchants rely primarily on credit checks and payment histories to protect themselves, rather than on their lien; however, the warehouseman has only a lien as recourse on default. The prior recorded liens are those imposed on the goods by the merchant who has sold the goods and then allowed the depositor to possess them for use.

The warehouseman or mover, who has a common carrier's duty to accept all shipments tended for movement within his authorized territory, takes all the risks of payment without the prior opportunity of credit check afforded to a merchant.

The purpose of the amendment is to make the warehouseman's lien for charges and expenses effective against all persons if the depositor was the legal possessor. This would permit the warehouseman to accept household goods for storage in sole reliance on the value of the goods themselves, especially in the situation of family emergencies.

PRECEDENTS

Legislation of this character was first adopted in California at the request and with the support of the warehousemen and movers in that State. Representations were made to the California Legislature at that time, as they have been made to your committee, that the impact of this amendment is minimal; that merchants themselves sell on time only to those whose credit they approve after having the opportunity to review a credit application and check on the income of the purchaser; and that the merchants rely primarily on the credit rating rather than on the lien to which they are entitled.

On the other hand, as a practical matter, movers take all the risks of payment without the prior opportunity to check for recorded liens or to check the credit of the customer. The mover has a common carrier's duty and obligation to accept all shipments tended for movement within his authorized territory, so the mover must rely on his warehouseman's lien for security rather than the usual credit criteria. The public at the same time is benefited by having this service available in the time of need, especially in distress situations which arise, as in the case of a death in the family or a change of or loss of employment.

Items purchased on time by a household usually represent a large portion of the warehouse security for charges. The warehouseman's recovery is thus reduced by reason of the loss of items of greatest sale value to merchant's prior lien, since as stated, the warehouseman's right or lien to proceeds in any sale, auction of the goods is subordinate prior recorded liens as well as to conditional sales contracts.

HEARING

A hearing on H.R. 6968 was held by the Judiciary Subcommittee of your Committee on May 11, 1971, at which time representatives of the government of the District of Columbia and of the Bar Association of the District of Columbia testified in support thereof. No opposition to the bill was expressed at this hearing, and none has been received by the Committee.

The legislation has been reviewed by the Bar Association Committee on Commercial and Business Law and was approved by its board of directors. It reflects changes recommended by the Permanent Editorial Board for the Uniform Commercial Code which has been adopted by all the States, and approved by the Congress for the District of Columbia by the act of December 30, 1963 (77 Stat. 718, District of Columbia Code, title 28, sec. 7–101 et seq.)

This bill represents the first change to the District of Columbia version of the Uniform Commercial Code, and the recommendation of the Permanent Editorial Board for the Uniform Commercial Code is as follows:

The 1966 official recommendations for amendment of the Uniform Commercial Code, promulgated by the Permanent Editorial Board for the Uniform Commercial Code, state, as official comments to subsections 3 of section 7–209, as amended, state:

Subsections (1) and (2) validate the lien and security interest "against the bailor." As against third parties, subsection (3) (a) continues the rule under the prior uniform statutory provision that to validate the lien the owner must have entrusted the goods to the depositors, and that the circumstances must be such that a pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner's interest will not be subjected to a lien or security interest arising out of a deposit of his goods by a thief. The warehouseman may be projected because of the actual, implied or apparent authority of the depositor, because of a Factor's Act, or because of other circumstances, which would protect a bona fide pledgee, unless those circumstances are denied effect under Section 7–503. When the third party is the holder of a security interest, the rights of the warehouseman depend on the priority given to a hypothetical bona fide pledge by Article 9, particularly Section 9–312. Thus the special priority granted to statutory liens by Section 9–310 does not apply to liens under subsection (1) of this section, since subsection (3) "expressly provides otherwise" within the meaning of Section 9–310. *As to household goods, however, subsection (c)(b) makes the warehouseman's lien "for charges and expenses in relation to the goods" effective against all persons if the depositor was the legal possessor. The purpose of the exception is to permit the warehouseman to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency.* (Emphasis added).

CONCLUSION

It is the judgment of our committee that the proposed legislation is valid and equitable, and our committee recommends that same be approved.

COSTS

No costs will result to the District of Columbia by the enactment of H.R. 6968.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. HUNGATE. I am happy to yield to the distinguished gentleman.

Mr. GROSS. I note the absence of any kind of report from the District government. I do not know whether that is important—but I find nothing by way of a letter from the District government.

Mr. HUNGATE. The District government did testify in favor of this legislation and they have no objection in connection with H.R. 6968. They indicated this in a letter signed by Mr. Graham Watt, the Assistant Commissioner dated May 11, 1971, that was not included in the report and it should have been.

Mr. GROSS. Mr. Speaker, I thank the gentleman.

Mr. HUNGATE. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

TAX EXEMPTION OF SUPREME COUNCIL OF THE SCOTTISH RITE OF FREEMASONRY

Mr. HUNGATE. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 7718) to exempt from taxation by the District of Columbia certain property in the District of Columbia which is owned by the Supreme Council—Mother Council of the World—of the Inspectors General Knights Commanders of the House of the Temple of Solomon of the Thirty-third Degree of the Ancient and Accepted Scottish Rite of Freemasonry of the Southern Jurisdiction of the United States of America, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

GENERAL LEAVE TO EXTEND

Mr. HUNGATE. Mr. Speaker, I ask unanimous consent that all Members may be permitted to extend their remarks in explanation of this bill.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

The Clerk read the bill, as follows:

H.R. 7718

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subject to the provisions of subsection (b), the property in the District of Columbia described in subsection (c) and owned by the Supreme Council (Mother Council of the World) of the Inspectors Generals Knights Commanders of the House of the Temple of Solomon of the Thirty-third Degree of the Ancient and Accepted Scottish Rite of Free Masonry of the Southern Jurisdiction of the United States of America (hereafter in this section referred to as the "Supreme Council") shall be exempt from taxation by the District of Columbia.

(b) The property described in subsection (c) shall be exempt from taxation by the District of Columbia so long as that property is owned by the Supreme Council and is used in carrying on its purposes and activities and is not used for any commercial purposes. The provisions of section 2 of the Act entitled "An Act to define the real property exempt from taxation in the District of Columbia", approved December 24, 1942 (D.C. Code, sec. 47–801b), shall apply with respect to the property made exempt from taxation by this section, and the Supreme Council shall make the reports required by section 3 of that Act (D.C. Code, sec. 47–801c) and shall have the appeal rights provided by section 5 of that Act (D.C. Code, sec. 47–801e).

(c) The property referred to in subsection (a) is as follows:

(1) Lots 86 to 97, lot 100, and parts of lots 98 and 99 in M.D. and H. J. Biddle's subdivision of lots in square 192, as per plat recorded in the Office of the Surveyor for the District of Columbia in liber 18 at folio 65; also part of the alley closed as shown on a plat recorded in said surveyor's office in liber 40 at folio 130, all described in one parcel as follows: Beginning at the northwest corner of said square and running thence south along 16th Street 217.50 feet to the north line of a 15 feet wide public alley and the southwest corner of said lot 86; thence east along said alley 196.50 feet; thence 86.50 feet north to a point in the south line of said lot 96, distant 15.50 feet west of the southeast corner of said lot; thence east to the southeast corner of said lot 96; thence north 131 feet to north "S" Street; thence west 212 feet to the place beginning; being now known for purposes of assessment and taxation as lot 800 in square 192.

(2) Lots 40, 41, and 42 in Thomas Tyrell's subdivision of original lot 14 in square 192, as per plat recorded in the said surveyor's office in liber J. H. K. at folio 383.

(3) Lot 28 in William S. Roose's subdivision of lots in square 192, as per plat recorded in the said surveyor's office in liber J. H. K. at folio 135.

(4) Lots 105 and 106 in Jesse W. Rawlings subdivision of lots in square 192, as per plat recorded in the said surveyor's office in liber 47 at folio 173.

(5) Lots 22 to 26 inclusive in William S. Roose's subdivision of lots in square 192, as per plat recorded in said surveyor's office in liber J. H. K. at folio 135; said land being now taxed as lot 808 in square 192.

(6) The alley closed as shown on plat recorded in the said surveyor's office in liber 157 at folio 24, and now known for the purposes of assessment and taxation as lot 819 in square 192.

SEC. 2. The first section of this Act shall apply with respect to taxable years beginning after June 30, 1971.

Mr. HUNGATE. Mr. Speaker, I move to strike the last word.

The Committee on the District of Columbia, to whom was referred the bill (H.R. 7718), to exempt from taxation by the District of Columbia certain property in the District of Columbia which is owned by the Supreme Council (Mother Council of the World) of the Inspectors General Knights Commanders of the House of the Temple of Solomon of the Thirty-third Degree of the Ancient and Accepted Scottish Rite of Freemasonry of the Southern Jurisdiction of the United States of America, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 7718, one of four identical bills introduced in the present Congress, is to exempt from taxation certain real property in the District of Columbia belonging to the Supreme Council—Mother Council of the World—of the Inspectors General Knights Commanders of the House of the Temple of Solomon of the Thirty-third Degree of the Ancient and Accepted Scottish Rite of Freemasonry of the Southern Jurisdiction of the United States of America.

This property is located at 16th and R Streets NW. Its current assessed value is $1,074,945, and the annual tax is $33,323.29. A portion of the property is used as a public library, and for this reason is currently exempt from District of Columbia real property taxation under existing law.

The exemption which this bill would provide would be effective with respect to taxable years beginning after June 30, 1971.

BACKGROUND

NATURE OF THE SUPREME COUNCIL OF THE SCOTTISH RITE

The Supreme Council was incorporated by act of Congress in 1896. Section 5 of that act provides in part that the corporation "shall not engage in any business for gain, the purposes of said corporation being fraternal and benevolent." Thus, the Supreme Council is prohibited, by the language of its charter, from engaging in any profitmaking activities.

The broad purposes of the Supreme Council, as set forth in a publication of general information concerning the Ancient and Accepted Scottish Rite of Freemasonry is as follows:

> The purpose of the Scottish Rite, simply stated, is to seek that which is the most worth in the world; to exalt the dignity of every person, the human side of our daily activities, and the maximum service to humanity; to aid mankind's search in God's universe for identity, for development and for destiny, and thereby achieve better men in a better world, happier men in a happier world, and wiser men in a wiser world.

The Scottish Rite is universal in its philosophy, and nonsectarian in membership.

SCOPE OF THE SUPREME COUNCIL

Contrary to the geographical restriction which its title might seem to imply, the Supreme Council, Southern Jurisdiction, actually covers the masonic organizations of 37 States and a number of Asian countries. This organization comprises 177 consistories, with a total of 565,796 members.

The property owned by the Supreme Council of the Scottish Rite, located at 1733 16th Street NW. in the District of Columbia, is known as "The House of the Temple." This magnificent structure houses the headquarters and administrative center for the entire Scottish Rite organization, as well as a fine public library and an educational museum.

CHARITABLE AND EDUCATIONAL CONTRIBUTIONS

All the revenues accruing to the Supreme Council are spent for educational and charitable purposes.

In the field of education, the supreme council has been one of the most active organizations in the United States devoted to fostering the appreciation of the great blessing and privileges of the American form of government, and to explaining the ideals and principles upon which is it founded. The Supreme Council's Department of Education has for many years contributed substantially to the betterment of the District of Columbia through its charitable activities. Its patriotic literature and films have been made available to countless millions, not only in the District but throughout the Nation. Its scholarship program has contributed materially to institutions of higher learning, both here and elsewhere.

During the 11-year period prior to 1970, seven booklets were published on the nature of the American constitutional system and many of the problems which have arisen to affect it. More than 7 million copies of the articles in these booklets have been distributed to public schools and to interested in all walks of life.

The Scottish Rite Foundation, a constituent part of the supreme council, is a strong instrumentality for distinguished service to religious, charitable, scientific, literary, and educational purposes.

In 1958, the foundation established a program in California to combat difficulties of children in learning to speak, in learning to read, and in coordination of movements. Also, the foundation in Denver assists financially in developing new medical and therapeutic techniques to bring the gift of speech to brain-injured children. Formerly, most such unfortunate children were doomed to a life of silence, and perhaps classed as imbeciles. in addition the foundation maintains hospitals for crippled children in Decatur, Ga., and in Dallas, Tex. It should be emphasized that there is no restriction whatever as to religious or fraternal affiliation of the parents of the children treated in these institutions.

This foundation has been qualified by the Federal Government as being a charitable institution, and as such it is exempt from Federal income tax and also from any State income taxes. All administrative expenses of the foundation are paid by the supreme council, so that

every dollar of donations and gifts goes to the use of the foundation's objectives.

A partial list of charitable contributions made in recent years by the Supreme Council is the following:

Partial list of charitable contributions

American University	$70,000
Baptist Theological Seminary	10,000
Baylor University	70,000
Doane College	25,000
Freedoms Foundation of Valley Forge	10,000
Hiram Scott College	10,000
MacArthur Memorial Foundation	8,500
Omaha, Nebraska Home for Boys	2,000
Pusan Charity Hospital	7,000
Scholarships—Public School Administration	50,000
School of the Ozarks	10,000
Silliman University (The Philippines)	2,500
Stanford University	40,000
The George Washington University—Total of Grant 1	1,025,000
The George Washington University—Total of Grant 2	1,000,000
United Givers Fund	22,000
Uta Halee Protestant Home	3,000
University of the Pacific	35,000
University of Tampa	5,000
Vanderbilt University—Law School Scholarship Fund	93,500
West Central 4–H Educational Center (Virginia)	22,500
Total	2,501,100

THE LIBRARY AND MUSEUM

The Library of the Supreme Council was first formed by Gen. Albert Pike, and included his own private library. In 1888, he reported to the Supreme Council, as grand commander, that the library then consisted of some 8,000 volumes valued at $40,000. At that time, the now world-famous Library of Congress occupied limited space in the Capitol Building, and its collections were not then organized for any extended public use. Except for the existence of reading clubs and restricted collections in educational institutions, there was not at that time any free public library in the Nation's Capital.

In this 1888 allocution Albert Pike directed that the Library of the Supreme Council should be open to the general public as a free library. Thus, it became the first public library in the District of Columbia.

Today, the library contains more than 175,000 volumes. The collection on Freemasonry in all its branches is one of the most complete in existence, and forms about one-third of the entire library.

The library's stack gallery is equipped with fireproof exhibition cases. In these are displayed many jewels, aprons, art objects, handicraft, and other museum pieces associated with Freemasonry.

One of its unique exhibits is the Masonic flag carried by Col. Edwin E. Aldrin during his walk on the moon, on July 20, 1969.

The House of the Temple is open to the public each weekday from 9 a.m. to 4 p.m., Monday through Friday, and from 9 a.m. to 12 noon on Saturday. In front of the entrance, set in bronze letters in the granite floor, are the words, "Erected to God and Dedicated to the Service of Humanity."

PRECEDENTS FOR LEGISLATION

In 1964, the Congress enacted Private Law 88–296 (78 Stat. 1173), exempting from District of Columbia taxation real property of the United Supreme Council, Thirty-third Degree, Ancient and Accepted Scottish Rite of Freemasonry, Southern Jurisdiction—Prince Hall Affiliation.

It should be explained that there are two Supreme Councils in the District of Columbia. One is known as the Prince Hall Supreme Council, which was the subject of the legislation referred to above, in the 88th Congress; the other is the Scottish Rite Supreme Council, which would receive the same degree of tax exemption under the provisions of the pending bill, H.R. 7718. In fact, the omission of the Scottish Rite Supreme Council from Private Law 88–296 was an oversight, which H.R. 7718 is intended to correct.

Over a period of years, 31 other charitable, religious, and similar organizations have been exempted from the District of Columbia real estate tax by special acts of Congress; and in addition, 10 other such organizations were exempted by being named in Public Law 77–846, approved December 24, 1942.

ESTIMATE OF COST

The property which would be exempted from District of Columbia taxation by the provisions of this bill is presently assessed at a value of $1,074,945, and the current annual tax on the property is $33,323.29. Hence, if neither the assessed evaluation nor the present real estate tax rate is changed during the next 5 fiscal years, the total cost to the District of Columbia through the tax loss over this period will amount to $166,616.45.

HEARING

A public hearing on this bill was conducted on June 22, 1971, by the Judiciary Subcommittee, at which time several Members of the Congress expressed strong support for its enactment.

CONCLUSION

Our committee feels that it is altogether fitting and appropriate that the property owned by the Scottish Rite Supreme Council, as described in H.R. 7718, should be exempted from District of Columbia real estate taxation. We cannot conceive of an organization more deserving of such recognition by reason of its dedicated, unselfish, and unrestricted service to all mankind. It is our strong opinion that this action on the part of the Congress, which in effect will provide this fine organization with an additional $33,000 each year to expend in its worthy and charitable causes, is very much in the public interest.

Mr. HALL. Mr. Speaker, will the gentleman yield?

Mr. HUNGATE. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Speaker, I appreciate my colleague from Missouri yielding to me. I furthermore appreciate his clear and concise statement about this legislation.

I might say to the gentleman, Mr. Speaker, that in accordance with custom I have read the committee report in detail and certainly am wont to be in accord with the intent of this legislation. I well realize the charitable purposes and demonstrated acts as listed in the report and, indeed, one of my closest friends is one of the Supreme counselors of perhaps another district in the Midwest, from Missouri. But from time to time, in spite of the requirement for this to be an organization of national scope and U.S. congressional charter with its headquarters in the District of Columbia, we have had legislation before us, either on District Day or sometimes even on the Consent Calendar, which involved tax exemption for equally charitable purposes but of only the local chapter or order; and therefore I want to be reassured by my colleague of the committee that this does represent a national effort. Indeed, if it was chartered by the Congress, we still have some responsibility to the Federal City before we forego tax collection, sitting as Council for the District of Columbia, of some $34,000 a year income.

Mr. HUNGATE. May I say to the gentleman that I appreciate his analysis of the legislation. I think it is accurate. I share his concern in respect to the number of organizations that are indeed exempted from taxation in the District. As the gentleman's question implies, this is an organization national or even international in scope, and this is the headquarters for 37 States plus Asian countries, so it is not merely a local organization.

I would say further to the gentleman that your Committee on the District of Columbia, in view of the financial plight that the District constantly seems to be in, has been concerned in, we have considered legislation that might take all of these organizations over a period of maybe 5 years and phase them out of tax exemption. But short of doing that, we were unable to distinguish the worthy purposes of this——

The SPEAKER. The time of the gentleman from Missouri has expired.

Mr. HALL. Mr. Speaker, I move to strike the requisite number of words.

The SPEAKER. The gentleman from Missouri is recognized for 5 minutes.

Mr. HALL. Mr. Speaker, I would like to yield to my colleague from Missouri to continue his explanation.

Mr. EVINS of Tennessee. Mr. Speaker, I wondered if the gentleman would yield so that I might commend him.

Mr. HUNGATE. I would be glad to yield to the gentleman for that purpose.

Mr. HALL. Mr. Speaker, I now have the floor, and I will be glad to yield for that purpose as soon as the gentleman from Missouri has completed his sentence.

Mr. HUNGATE. I thank my colleague from Missouri. We considered the problem of the 31 or 41 organizations that enjoy similar exemptions. We considered phasing them out at maybe 20 percent a

year so they would not get a sudden shock. But short of accomplishing that purpose, we were unable to distinguish the worthy motives and charities carried on by this organization from many others that might seem to some to be even less worthy.

I thank the gentleman for yielding.

Mr. HALL. Mr. Speaker, I appreciate the gentleman's explanation. Merely to "nail it down" as I understand it, this is not a case of legislation similar to that which we had before us once upon a time since I have been in the Congress, to exempt the local chapter of the DAR instead of the national organization of the DAR, whose blessed and revered sisters have Constitution Hall and use it and others for national purposes.

Mr. HUNGATE. If the gentleman will yield further, he has stated the problem correctly. The only thing that would prevent this from being totally national is the fact that it represents 37 States and other countries, but there is apparently some other arrangement for the other 13 States.

Mr. HALL. I understand that, but its jurisdiction was chartered by the Congress, as I understand, and therefore it is of national import.

Mr. HUNGATE. That is correct.

Mr. HALL. Mr. Speaker, I am glad to yield to my colleague from Tennessee.

Mr. EVINS of Tennessee. I thank the gentleman for yielding. I merely wish to take a moment to commend the subcommittee for its action on this bill, the distinguished chairman of the committee, its ranking member (Mr. NELSEN) and others. This is a humanitarian, charitable bill.

Mr. Speaker, believing as we all do in the motto, "Equal Justice Under Law," I want to strongly recommend favorable action on the pending bill H.R. 7718.

This measure was reported favorably by the District of Columbia Committee which recommended that the bill be passed. It is an identical measure with H.R. 7717 on this project which I was pleased to introduce. This proposed legislation would exempt from taxation by the District of Columbia, the property owned by the Supreme Council of the Scottish Rite of Freemasonry. Specifically, it is that magnificent structure and the land upon which it is built located at 1733 16th Street NW., in the city of Washington, known as "The House of the Temple." This imposing building in our Nation's Capital, was designed by John Russell Pope, one of America's great architects, constructed with handpicked materials from the United States and other parts of the world, decorated, and furnished with priceless articles of the finest craftsmanship. This edifice houses a great public library, an educational museum, as well as the headquarters and active administrative center of the Scottish Rite.

Today, the library contains more than 175,000 volumes and many cases of historical exhibits. In 1888, Gen. Albert Pike directed that the Library of the Supreme Council should be open to the general public as a free library and, thus, it became the first public library in the District of Columbia. The House of the Temple is open to everyone, each weekday from 9 a.m. to 4 p.m., Monday through Friday, and from 9 a.m. to 12 noon on Saturday. In front of the entrance, set in bronze letters in the granite floor are the words, "Erected to God and dedicated to the Service of Humanity."

As we all believe in equal rights, I wish to emphasize the fact that this legislation is not a request for any special favor—not the asking for something different or extraordinary—not the solicitation of a privilege, but merely the enactment, or one might properly say, the implementation of the broad provisions contained in the District of Columbia Code Annotated (1967 edition and 1971 Cumulative Supplement).

Over a period of years, approximately 43 charitable, religious, and similar organizations have been exempted from the District of Columbia real estate tax by special acts of the Congress. These include the following: American Pharmaceutical Association, National Geographic Society, Medical Society of the District of Columbia, National Lutheran Home, National Academy of Science, Brookings Institution, American Forestry Association, American Tree Association, Carnegie Institutions of Washington, American Chemical Society, American Association to Promote Teaching of Speech to the Deaf, Disabled American Veterans, National Society of the Colonial Dames of America, American Red Cross, Louise Home, Corcoran Gallery of Art, Luther Statue Association, St. Mark's Protestant Episcopal Church, Young Woman's Christian Home, Young Women's Christian Association, Young Men's Christian Association, Frederick Douglass Memorial and Historical Association, Edes Home, Daughters of the American Revolution, National Society United States Daughters of 1812, National Society of the Sons of the American Revolution, the American Legion, National Education Association, Society of the Cincinnati, American Veterans of World War II, Veterans of Foreign Wars, National Woman's Party, American Association of University Women, National Guard Association, Woodrow Wilson Home, American Institute of Architects Foundation. In this connection I have prepared a table which shows the names of these organizations whose property has been exempted from taxation by the District of Columbia, and the location of such property, together with statutory reference granting such tax exemption. This table follows my remarks. All this proposed legislation would do, is to remove an invidious discrimination now present against a truly great, a genuinely benevolent and dedicated charitable, educational and fraternal body.

In 1964, the Congress enacted Private Law 88–296 (78 Stat. 1173), exempting from District of Columbia taxation real property of the United Supreme Council, 33d degree, Ancient and Accepted Scottish Rite of Freemasory, southern jurisdiction—Prince Hall affiliation.

It should be explained that there are two supreme councils in the District of Columbia. One is known as the Prince Hall Supreme Council, which was the subject of the legislation referred to above, in the 88th Congress; the other is the Scottish Rite Supreme Council, which would receive the same degree of tax exemption under the provisions of my bill, H.R. 7717, and the pending bill, H.R. 7718. In fact, the omission of the Scottish Rite Supreme Council from Private Law 88–296 was an oversight, which this measure is intended to correct.

The District of Columbia Code, title 47, concerns "taxation and fiscal affairs," and its chapter 8 deals with "exemption from taxation." Among the provisions of section 47–801a, specifying real property exempt from taxation, may be found the following:

(g) Library buildings belonging to and operated by organizations which are not organized or operated for private gain and are open to the public generally.

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

* * * * *

(q) Buildings belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemptions under the provisions of Sections 47–801a, 47–801b, and 48–801c to 47–801f, and used as administrative headquarters thereof.

(r) (1) Grounds belonging to and reasonable required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemptions under the provisions of Sections 47–801a, 47–801b and 47–801c to 47–801f.

Applying the criteria for exemption from taxation of the District of Columbia Code, section 47–801a, to the objectives of the bill now before this House, we must conclude:

As to subparagraph (g) that library buildings are exempt. The House of the Temple has over 175,000 volumes. The statute also requires that it be operated by nonprofit organizations. The supreme council is not only such a nonprofit body, but is organized for charitable, educational, humanitarian, and fraternal purposes. The District of Columbia Code also requires the library to be open to the public generally. The library in the House of the Temple is open every day of the week, except on Sunday, to the public generally, and it is free and has been free for the past 83 years.

In regard to subparagraph (h) that the building be used for purposes of public charity, I should like to cite a partial list of charitable contributions made the by supreme council in recent years:

American University, $70,000.

Baptist Theological Seminary, 1964, $10,000.

Baylor University, $70,000.

Doane College, $25,000.

Freedoms Foundation of Valley Forge, 1963 and 1965, $10,000.

Hiram Scott College, $10,000.

MacArthur Memorial Foundation, $8,500.

Omaha, Nebraska Home for Boys, $2,000.

Pusan Charity Hospital, 1963, $7,000.

Scholarships: Public School Administration. Two $5,000 Scholarships each year for five years for doctorates in Public School Administration, $50,000.

School of the Ozarks, $10,000.

Silliman University (The Philippines), 1961 and 1963, $2,500.

Stanford University, $40,000.

The George Washington University—1927 and 1947—Establishment of School of Government, Business and International Affairs, $1,025,000.

The George Washington University—Since 1956, 260 Fellowship Grants, totaling, $1,000,000.

United Givers Fund, 1956 and 1957, $22,100.

Uta Halee Protestant Home, 1961–70, $3,000.

University of the Pacific, 1961–69, $35,000.

University of Tampa, 1966, $5,000.

Vanderbilt University—Law School Scholarship Fund, $93,500.

West Central 4–H Educational Center (Virgina), 1967–70, $22,500.

I should also like to invite the attention of my colleagues to the fact that over $2 million was given to the George Washington University and a substantial sum of money to the American University, both in the District of Columbia.

As the report on this bill indicates, the Scottish Rite Foundation, a constituent part of the supreme council, has been ruled as being a charitable organization and qualified by the U.S. Government to be exempt from Federal income tax.

In 1958, the California Scottish Rite Foundation established a program for childhood aphasia to combat difficulties of children in learning to speak—childhood aphasia; in learning to read—dyslexia; and in coordination of movements—dyspraxia.

The Scottish Rite Foundation of Denver, founded in 1952, assists financially in developing new medical and therapeutic techniques which can bring the gift of speech to brain-injured—aphasic children. Formerly, most of these unfortunate afflicted children were doomed to a life of silence, and perhaps classed as imbeciles.

In addition, the Scottish Rite maintains hosptials for crippled children at Decatur, Ga., and at Dallas, Tex. I should like to strongly emphasize that there is no restriction as to religious or fraternal affiliation of the parents; patients are admitted whether Protestant, Catholic, or Jewish, and whether the father is or is not a Mason. This is so stated on pages 20 and 21 of a pamphlet entitled, "General Information Concerning the Ancient and Accepted Scottish Rite."

In the field of education, I should point out further, Mr. Speaker, the Supreme Council has been one of the most active organizations in the United States devoted to fostering the appreciation of the great blessings and privileges of the American form of government and explaining the ideals of the principles upon which our system of government was founded. It stresses the essential need for the development of man's spiritual capacity and understanding under God. The Scottish Rite is universal in its philosophy and nonsectarian in membership.

During an 11-year period up to 1970, seven booklets were published on the nature of the American constitutional system and many of the problems which had arisen to affect it. Over 7 million copies of the articles in the booklets were distributed to public schools and to interested persons in all walks of life.

In 1970, a new series of pamphlets were published by the Supreme Council under the general title "Dynamic Freedoms." The four issues are entitled as follows: "Our Freedom Documents," "Communism—Enemy of All Freedoms," "Separation of Church and State," and "Free Enterprise—An American Invention." All of these publications manifest that the Supreme Council favors the inculcation of patriotism, respect for law and order, and undying loyalty to the Constitution of the United States of America.

Mr. Speaker, in summary and in urging passage of the pending bill, I should like to quote from the committee report (H. Rept. 92–321), as follows:

> Your committee feels that it is altogether fitting and appropriate that the property owned by the Scottish Rite Supreme Council, as described in H.R. 7718, should be exempted from District of Columbia real estate taxation. We cannot conceive of an organization more deserving of such recognition by reason of its dedicated, unselfish, and unrestricted service to all mankind. It is our strong opinion that this action on the part of the Congress, which in effect will provide this fine organization with an additional $33,000 each year to expend in its worthy and charitable causes, is very much in the public interest.

LIST OF ORGANIZATIONS WHOSE PROPERTIES IN THE DISTRICT OF COLUMBIA ARE EXEMPT FROM TAXATION, DISTRICT OF COLUMBIA CODE

Code section	Name of organization	Square number	Lot number or remarks
47–801a–(K). See also, Public Law 77–846, 56 Stat. 1089 (1942).	(1) National Geographic Society		Buildings.
	(2) American Pharmaceutical Association		
	(3) The Medical Society of the District of Columbia.		
	(4) National Lutheran Home		
	(5) National Academy of Science		
	(6) Brookings Institution		
	(7) American Forestry Association		
	(8) American Tree Association		
	(9) Carnegie Institution of Washington		
	(10) American Chemical Society		
	(11) American Association to Promote Teaching of Speech to the Deaf.		
47–801a–1	Disabled American Veterans	153	
47–801a–2	National Society of the Colonial Dames of America.	1, 285	801 known as 2715 Q Street NW.
47–801b–1	American Red Cross		
47–805	Louise Home	169	
47–810	Corcoran Gallery of Art		
47–812	Luther Statue Association		
47–813	St. Mark's Protestant Episcopal Church	788	7 and 9.
47–814	Young Woman's Christian Home		
47–815	Young Women's Christian Association		
47–817	Young Men's Christian Association		
47–818	Frederick Douglass Memorial and Historical Association.		Cedar Hill, Anacostia.
47–819	Edes Home		Home for aged and indigent widows.
47–821	Daughters of the American Revolution	173	8, 9, and 10.
47–822	do	173	
47–823	do	173	12, 13, 14, 15, and 16.
47–824	do	173	23, 24, 25, 26, 27, and 28.
47–825	do	173	4, 5, 6, 7, and 11.
47–826	National Society United States Daughters of 1812.	210	811.
47–827	National Society of the Sons of the American Revolution.		
47–828	The American Legion	185	32 and 33.
47–829	National Education Association		
47–830	Society of The Cincinnati	67	42, 43, 49, and part of lot 5.
47–831	American Veterans of World War II	160	805.
47–832	Veterans of Foreign Wars	757	38, 20, 19, and 841.
47–833	National Woman's Party	725	863, 864, and 865.
47–834	American Association of University Women	31	843.
47–835	National Guard Association	625	60.
47–836	Woodrow Wilson Home	2, 717	36 and 37.
47–837	American Institute of Architects Foundation.	170	36—Octagon House.
Private Law 88–296, 78 Stat. 1173 (1964).	[Exemption from taxation by private law.]	5, 405	11, 12, 15, 16, and 21, Roland Park.
	United Supreme Council, 33d degree, Ancient and Accepted Scottish Rite of Freemasonry, Southern Jurisdiction—Prince Hall Affiliation.	5, 405	2, 3, 4, 5, 6, 7, 8, 9 and 10, 17, and 22, Roland Park 2.
		5, 405	1 and 19, Roland Park.
		5, 405	18, Roland Park.
		5, 405	20, Roland Park.
		5, 405	828 and 848, Roland Park.
			(Note: All lots above mentioned except portions prior condemned.)

Mr. NELSEN. Mr. Speaker, will the gentleman yield?

Mr. HALL. Mr. Speaker, I am glad to yield to my colleague from Minnesota, the ranking member of the Committee on the District of Columbia.

Mr. NELSEN. I thank the gentleman for yielding.

As pointed out by the gentleman from Missouri (Mr. HUNGATE) all of the alternative possibilities were considered. However, at this point, in all fairness it seemed only right that this bill be passed, and I recommend that it be passed at this session today.

I thank the gentleman for yielding.

Mr. PASSMAN. Mr. Speaker, will the gentleman yield?

Mr. HALL. I am delighted to yield to the gentleman from Louisiana, whom I saw on his feet first.

Mr. PASSMAN. Mr. Speaker, I thank the distinguished gentleman from Missouri (Dr. HALL) for yielding.

Mr. Speaker, in the report I find listed grants made by the Supreme Council to the George Washington University in the amount of $2,025,000. The Supreme Council has helped the District of Columbia substantially by the very liberal grants made to institutions domiciled in the District of Columbia, both through education and charity.

Mr. HALL. Mr. Speaker, I appreciate the comment.

As I say, I have studied the bill in detail. I do know of the organization's charitable work, and also their work with crippled children.

Mr. MAHON. Mr. Speaker, will the gentleman yield?

Mr. HALL. I yield to the gentleman from Texas.

Mr. MAHON. Mr. Speaker, I concur in the favorable remarks which have been made on the floor on this legislation. I am pleased to sponsor it and I thank the Committee for the favorable action which it has taken.

I thank the gentleman for yielding.

Mr. McMILLAN. Mr. Speaker, will the gentleman yield?

Mr. HALL. I yield to the distinguished chairman of the Committee on the District of Columbia, the gentleman from South Carolina.

Mr. McMILLAN. Mr. Speaker, we feel that every one of these organizations we have exempted should be exempted because the States have exempted these charity organizations which make no profit and rent no space, certainly the majority of these organizations do more good than any taxes they would pay. We are fortunate to have organizations like this donate $3 million to organizations such as George Washington University and other universities, as well as other institutions in the District.

Mr. HALL. Mr. Speaker, I am completely reassured.

I thank the committee for the statements on this legislation. I do hope they go forward with eventually recouping for tax purposes all of this valuable real estate in Metropolitan Washington and the District of Columbia, if they can find an equitable basis for doing it. I shall vote in favor of this bill.

Mr. SLACK. Mr. Speaker, I wish to associate myself with those who support passage of legislation granting exemption from real estate taxes for property owned by the Scottish Rite Supreme Council in the District of Columbia. There is ample precedent for this legislation in connection with the holdings of charitable and religious organizations. Those of us who have had the high honor of association with this organization can testify from firsthand experience that its function is wholly and entirely dominated by its dedication to the advancement of charitable programs.

Most Americans are familar with the strong emphasis placed on maintenance and improvement of the crippled children's hospitals and the work in fostering new medical and therapeutic techniques to bring the gift of speech to children who have suffered brain injuries. In addition there are many contributions to charity hospitals, orphanages and educational institutions which concentrate and focus on improvement of conditions for handicapped young people. It has been true of the Scottish Rite charitable program for many years that all overhead expenses of the program are paid by sources other than donations. As a result, all gifts and donations are channeled directly and in sum total to the beneficiaries.

The work performed under the guidance of the Scottish Rite Supreme Council represents one of the major private efforts toward bettering conditions for disadvantaged and handicapped persons. It is eminently fair that this work should proceed in a manner which permits all of the available funds to be placed at the disposal of those agencies which can take direct action in this important field. For this reason I support the legislation and urge its passage since the relatively small loss of real estate taxes to the District of Columbia government will be more than made up in the total of contributions to universities and private charitable agencies both located in the District of Columbia metropolitan area.

Mr. SEBELIUS. Mr. Speaker, as author of one of the four identical bills introduced in the present Congress, I rise in support of H.R. 7718.

I would commend the gentleman from Louisiana (Mr. PASSMAN), for his leadership in this matter and would like to associate myself with his remarks and those of the gentleman from Texas (Mr. MAHON), the gentleman from Tennessee (Mr. EVINS), and the gentleman from Colorado (Mr. BROTZMAN).

Rather than simply repeat the excellent statements made by my colleagues or the facts presented in the committee report, I would only state that as a graduate of George Washington University, the largest recipient of education contributions from the Supreme Council, I am fully aware of the effect the grants to that university have had on the students of the university.

I earnestly urge the passage of this bill.

Mr. SIKES. Mr. Speaker, I support the action of the Committee on the District of Columbia in recommending the passage of H.R. 7718 to exempt certain real property of the supreme council of the Scottish Rite of Freemasonry in Washington, D.C., from taxation by the District of Columbia. The distinguished chairman of the committee, Mr. McMILLAN, and other members have well stated the reasons for this meritorious proposal. The property in question is known as the House of the Temple and is owned by the supreme council of the Scottish Rite. It houses the headquarters and administrative center for the entire Scottish Rite organization, as well as a fine public library and an educational museum. All the revenues accruing to the supreme council are spent for educational and charitable purposes. In fact, the organization has contributed substantially to the betterment of the District of Columbia through its charitable activities and through the distribution of patriotic literature and films. The programs of the organization are nationwide in scope and they include hospitals for crippled children in Georgia and in Texas. There are many organizations which have been exempted from District taxes on real property, none of them more deserving than the supreme council. I trust that this measure can enjoy a unanimous vote of the House today, and that it will also receive speedy and favorable consideration by the Senate.

Mr. HUNGATE. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

TAX-SHELTERED ANNUITIES FOR DISTRICT OF COLUMBIA TEACHERS

Mr. McMILLAN. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 9395) to authorize the Commissioner of the District of Columbia to enter into agreements with teachers and other employees of the Board of Education of the District of Columbia for the purchase of annuity contracts, and ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The Clerk read the bill, as follows:

H.R. 9395

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding the provisions of section 1 of the District of Columbia Teachers' Salary Act of 1955 (D.C. Code, sec. 31–1501), and of any other law, or regulation affecting the salary of teachers or school officers employed in the service of the public schools of the District of Columbia, the Commissioner of the District of Columbia (hereinafter referred to as the "Commissioner") is authorized to enter into an agreement with a teacher or school officer to reduce the salary of that teacher or school officer by an amount requested by that teacher or school officer, and to contribute that amount for the purchase of an annuity contract described in section 403(b) of the Internal Revenue Code of 1954 (relating to the taxability of beneficiaries of annuity plans) for that teacher or school official.

(b) The reduction in salary effected under an agreement authorized by this Act shall not be considered in computing the salary for any teacher or school officer for any other purpose including, but not limited to, the determination of benefits or contributions under chapters 81 (relating to workmen's compensation) and 87 (relating to life insurance) of title 5 of the United States Code.

SEC. 2. The Commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this Act.

SEC. 3. For the purposes of this Act, the term "teacher or school officer includes all teachers, school officers, and other employees of the Board of Education of the District of Columbia who receive compensation according to the salary schedules under section 1

of the District of Columbia Teachers' Salary Act of 1955, and to whom the provisions of the Act entitled "An Act for the retirement of public school teachers in the District of Columbia", approved August 7, 1946 (D.C. Code, sec. 31–721 et seq.) are applicable.

SEC. 4. This Act shall apply with respect to any pay period of any teacher or school officer beginning on or after the one hundred and eightieth day after the date of enactment of this Act.

Mr. McMILLAN. Mr. Speaker, I move to strike the last word.

The purpose of H.R. 9395 is to authorize the reduction of salaries of teachers and school officers employed in the service of the public schools of the District of Columbia, by an amount which would be paid into a tax-sheltered annuity program pursuant to the provisions of section 403(b) of the Internal Revenue Code of 1954, relating to the taxability of beneficiaries of annuity plans.

REASON FOR LEGISLATION

Under the above-cited section of the Internal Revenue Code, employees of educational institutions are allowed to purchase annuities to supplement their retirement incomes, through a reduction in salary not in excess of one-sixth thereof; and the amounts of these reductions for the purchase of annuities are not subject to Federal income tax, although of course Federal income tax is payable on the actual benefits received from these annuities subsequent to retirement. And at the same time, the employee's salary prior to such reduction is considered to be his salary for all other purposes, such as retirement, life insurance, and disability compensation.

Participation in a tax-sheltered annuity program pursuant to the provisions of this bill would be purely voluntary on the part of educational personnel, and those not wishing to participate would be under no obligation to do so.

Your committee is informed that according to the latest available figures, more than 200 school districts in at least 43 States provide tax-sheltered annuity plans for their educational employees, including the neighboring States of Maryland and Virginia. These States are the following: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

The effect of the enactment of H.R. 9395 would be to give the District of Columbia the authority to enter into salary reduction agreements with eligible employees who desire to participate in such a program, which would assist the District in its recruitment of educational personnel who might be interested in taking advantage of the benefits offered by this type of program.

The bill will become effective 180 days after the date of enactment.

HEARINGS

A public hearing on this measure was conducted on May 24, 1971. Support for the enactment of the bill was offered by the District of Columbia government, the District of Columbia Board of Education, and the Washington Teachers Union.

COSTS

The enactment of this proposed legislation will not result in any additional cost to the government of the District of Columbia.

CONCLUSION

It is the opinion of our committee that this proposed legislation, which is designed to allow the teachers and school officers in the public school system of the District of Columbia to enjoy the advantages of a tax-sheltered annuity program, is justified because it will simply extend to these employees in the Nation's Capital an economic benefit which is already provided such employees in most other school jurisdictions.

Mr. Speaker, at this time I yield to the gentleman from Virginia (Mr. BROYHILL), the author of the bill, so that he may explain the bill.

Mr. BROYHILL of Virginia. Mr. Speaker, I rise to solicit the support of my colleagues for the enactment of the bill H.R. 9395, of which I am pleased to be the author.

The purpose of this bill is to authorize the Commissioner of the District of Columbia, upon the request of a teacher or other professional employee of the District of Columbia Board of Education, to reduce the salary of such an employee by an amount which will be paid toward that employee's credit in a tax-sheltered annuity program.

Section 403(b) of the Internal Revenue Code, and the regulations applicable thereto, provide that employees of educational institutions may purchase annuities to supplement their retirement pensions, by a reduction in their salaries not in excess of one-sixth thereof and the amounts so deducted for this purpose shall not be subject to Federal income tax. Of course, however, Federal income taxes will be payable on the actual benefits received by the employees from these annuities after their retirement.

It is further provided that the salary of such an employee before this reduction shall be considered to be his salary for all other purposes, such as retirement, life insurance, and disability compensation.

I am informed that at present, some 43 States have authorized these salary reductions for tax-sheltered annuity programs for educational employees, including the States of Virginia and Maryland.

Legislation is required to authorize this program through salary reductions for personnel of the District of Columbia public school system. Such legislation was requested by the Commissioner of the District of Columbia in 1968, and a bill to accomplish this purpose was introduced at that time, but too late in the session to receive action. This legislation is supported also by the District of Columbia Board of Education and the District of Columbia Teachers Union.

The enactment of this bill will involve no financial participation whatever by the District of Columbia government. Thus, the only expense to the city will be the small cost of administration.

Mr. Speaker, I urge favorable action on this measure.

Mr. McMILLAN. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AUTHORIZING DISTRICT OF COLUMBIA TO ENTER INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

Mr. McMILLAN. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 8407) to authorize the District of Columbia to enter into the Interstate Agreement on Qualification of Educational Personnel, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The Clerk read the bill, as follows:

H.R. 8407

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia an agreement with any State or States legally joining therein in the form substantially as follows:

"THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

"ARTICLE I—Purpose, Findings, and Policy

"1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

"2. The party States find that included in the large movement of population among all sections of the Nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such

personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Agreement can increase the availability of educational manpower.

"ARTICLE II—Definitions

"As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

"1. 'Educational personnel' means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

"2. 'Designated State official' means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

"3. 'Accept', or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

"4. 'State' means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

"5. 'Originating State' means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

"6. 'Receiving State' means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

"ARTICLE III—Interstate Educational Personnel Contracts

"1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated State officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated State official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on basis sufficiently comparable, even though not identical to that prevailing in his own State.

"2. Any such contract shall provide for:

"(a) Its duration.

"(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

"(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

"(d) Any other necessary matters.

"3. No contract made pursuant to this Agreement shall be for a term longer than five years by any such contract may be renewed for like or lesser periods.

"4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating State approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any persons qualified because of successful completion of a program prior to January 1, 1954.

"5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

"6. A contract committee composed of the designated State officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

"ARTICLE IV—Approved and Accepted Programs

"1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

"2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

"ARTICLE V—Interstate Cooperation

"The party States agree that:

"1. They will, so far as practicable, prefer the making of multi-lateral contracts, pursuant to Article III of this Agreement.

"2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

"ARTICLE VI—Agreement Evaluation

"The designated State officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

"ARTICLE VII—Other Arrangements

"Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

"ARTICLE VIII—Effect and Withdrawal

"1. This Agreement shall become effective when enacted into law by two States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

"2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

"3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

"ARTICLE IX—Construction and Severability

"This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters."

SEC. 2. The "designated State official" for the District of Columbia shall be the Superintendent of Schools of the District of Columbia. The Superintendent shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the Board of Education of the District of Columbia.

SEC. 3. True copies of all contracts made on behalf of the District of Columbia pursuant to the Agreement shall be kept on file in the office of the Board of Education of the District of Columbia and in the office of the Commissioner of the District of Columbia. The Superintendent of Schools shall publish all such contracts in convenient form.

SEC. 4. As used in the Interstate Agreement on Qualification of Educational Personnel, the term "Governor" when used with reference to the District of Columbia shall mean the Commissioner of the District of Columbia.

Mr. McMILLAN. Mr. Speaker, I move to strike the last word.

Mr. Speaker, the purpose of the bill H.R. 8407 is to authorize the District of Columbia to enter into the Interstate Agreement on Qualification of Educational Personnel. This will allow the District to enter into contracts with other member states, which will reduce or eliminate the duplication of administration effort in checking teacher qualification records which have already been evaluated by competent authorities in other States, in connection with teachers and other educational personnel who are licensed in these other States and who apply for employment in the District of Columbia public school system, or vice versa. This will result in faster processing of such teacher applications and more rapid identification of qualified applicants, thus increasing the available supply of qualified educational personnel. As many of the District's educational personnel come from other jurisdictions, this bill will facilitate the certification process and thereby improve the city's recruitment procedures.

NEED FOR LEGISLATION

Certification and licensing of teachers already licensed or certified in other jurisdictions has always been a time-consuming, complicated, and cumbersome process both for the teacher and the certification officer. The reevaluation of teacher records which have been

evaluated already by competent authorities in other jurisdictions with similar standards is wasteful of the administrator's and teachers time, energies, and skills.

Each State has its own system of laws and administrative practices governing the training, licensing, and certification of school personnel. As a result, all too often an experienced, fully certified teacher on moving to another State will find that he or she fails to meet some technical certification specification in the new State. For example, the course taken in State A's teachers' college entitled "Teaching in the Elementary Schools" may not meet State B's requirement of a course in "Methods of Teaching in the Elementary Schools," or the course may be only a 3-hour instead of a 4-hour course.

When States have similar standards for certification or licensing, these types of minor technicalities place unrealistic restraints on the mobility of teachers and on the ability of a jurisdiction to hire experienced teachers with licenses in other jurisdictions. This leads to a loss in the total available educational work force, as fully certified teachers moving to a new State are discouraged by the new certification requirements. This is true particularly in the case of women who move because of the husband's change in employment location.

In concentrating on minor technicalities, a school system's officials frequently must overlook the larger picture. The fact that the teacher applicant may have 10 years of successful experience and a master's degree in her field from a fully accredited teachers' college all too often cannot be considered. This is utterly unrealistic, in view of the fact that, generally speaking, the teaching of mathematics in California or New York requires substantially the same skills as teaching mathematics in Pennsylvania or the District of Columbia; and a properly trained school librarian in Nebraska is able to function just as ably in Idaho or Wisconsin. In short, the fact is that with only very limited exceptions, a person who is adequately prepared as a teacher or other school professional in one State should be capable of meeting the minimum skills and training required in another State.

Despite general agreement among professional educators that certification requirements for out-of-State educational personnel have always been unnecessarily cumbersome and unrealistic, however, until recent years attempts to ameliorate this situation met with little success.

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

In 1966, a nationwide interstate certification project was begun, and a national plan was developed which would allow States, pursuant to enabling legislation, to enter into mutual agreements with other States regarding the acceptance of license or certification of educational personnel.

After intensive study and consultation among officials from State departments of education and other policymaking State officials, including substantial representation from various State legislatures, the interstate agreement was developed in its present form. This developmental process took 2 years to accomplish, and the first States enacted this interstate agreement in 1968. Today, 28 States are parties to this agreement, and many others have it under active consideration. Even though the benefits of this interstate agreement are nationwide as well as regional, it is important to note that all of the District of Columbia's neighboring jurisdiction have enacted the measure.

The 28 States which have adopted the interstate agreement are the following: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

PROVISIONS OF THE BILL

This bill is patterned directly from the Interstate Agreement. It is legally similar to many other enabling statutes allowing interstate agreements in other fields of State government responsibility. However, the provisions of H.R. 8407 are less elaborate than those of many other interstate compacts. It sets up no new administrative body and requires no additional appropriation of funds to become effective. Its sole function is to provide the necessary legal authority for District of Columbia officials to contract with other State public education agencies regarding the mutual acceptance of out-of-State certification and licensing decisions regarding educational personnel.

The Interstate Agreement includes safeguards to insure that it will not produce interstate acceptance of substandard educational personnel. Section 1 of article 3 of the agreement states that—

A designated State official may enter into a contract pursuant to this article only with States in which he finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of education personnel on a basis sufficiently comparable, even though not identical, to that prevailing in his own State.

The contracts entered into under the agreement have the weight of law, and prescribe the methods under which the teacher qualification of a signatory State can be accepted by other party States without the necessity for reexamination of such qualifications. The agreement specifies the minimum contents of such contracts in such a way as to assure the contracting States that standards employed for passing on such qualifications will remain at a high professional level.

HEARINGS

A public hearing on H.R. 8407 was conducted on May 24, 1971, at which time testimony in favor of the legislation was submitted by spokesmen for the District of Columbia government, the District of Columbia public school system and the Washington Teachers' Union. No opposition to the measure was expressed.

The Commissioner of the District of Columbia, expressed his support for the bill at that hearing.

Mr. BROYHILL of Virginia. Mr. Speaker, will the gentleman yield?

Mr. McMILLAN. I yield to the gentleman from Virginia.

Mr. BROYHILL of Virginia. Mr. Speaker, I wish to commend to my colleagues the bill H.R. 8407, of which I am the author, and which I believe will be of material assistance to the District of Columbia Board of Education in the matter of certifying and licensing teachers and other professional personnel who are licensed in other school jurisdictions and who wish to be employed in the District of Columbia public school system.

At present, in evaluating the qualifications of an applicant from another school system for certification and licensing in the District of Columbia public schools, the District of Columbia school administration must pursue a lengthy and tedious process wherein the applicant's entire background must be measured against the District's requirements for certification, in detail. This process includes an examination of detailed descriptions of academic course requirements which are part of teacher-training programs, as well as a miscellaneous list of other statutory and administrative requirements. And until 3 years ago, this long and laborious process was used in all State educational systems in evaluating teacher applicants from other States.

While the requirements for teacher certification and licensing in the various States and the District of Columbia do vary to some extent, the main body of principles utilized in such evaluation is generally agreed upon by all school systems in determining teacher qualification. For this reason, it is a fact that with only very few and limited exceptions, a person who is properly trained and adequately prepared as a teacher or other school professional employee in one State is equally qualified to perform satisfactorily in any other State as well.

In recognition of this fact, a nationwide project was started in 1966, with a view toward developing a national plan of teacher certification which would allow the States, subject to enabling legislation, to enter into mutual agreements with other States with respect to the acceptance of certification of teachers and other educational personnel. After a developmental process which took 2 years of intensive study and consultation among officials of many State departments of education and other policymaking State officials, the Interstate Agreement on Qualification of Educational Personnel was completed in its present form.

The first States entered this agreement in 1968, and today 28 States have subscribed to this pact, including my own State of Virginia and our neighboring State of Maryland.

The contracts which this agreement authorizes between the member States have the force of law, and are required to spell out the methods and conditions under which teacher qualification standards of one State may be accepted by another State without the necessity of a reexamination and evaluation of such qualifications.

It is important to note that the agreement specifies the minimum contents of these interstate contracts so as to assure that the standards of mutual acceptance will be such as to maintain high levels of teacher qualification in all States.

H.R. 8407 is simply enabling legislation, which will permit the District of Columbia to enter into contracts with the member States through the Interstate Agreement, and thus will enable the District of Columbia Board of Education for the first time to recognize decisions on teacher qualifications which have already been made by competent authorities in the party States. And at the same time, as I have pointed out, safeguards are provided which will assure that such procedures will not lead the District to accept substandard educational personnel. This legislation will involve no additional expense to the District of Columbia government.

Mr. Speaker, I urge favorable action on this proposed legislation, which will provide the means by which the District of Columbia school system may join this nationwide movement to standardize the procedure of evaluating teacher applicants who are licensed elsewhere, to the benefit of all concerned.

Mr. FAUNTROY. Mr. Speaker, will the gentleman yield?

Mr. McMILLAN. I yield to the gentleman from Washington, D.C.

Mr. FAUNTROY. Mr. Speaker, I rise in support of H.R. 8407 and H.R. 9395 both of which bills have been introduced by the gentleman from Virginia (Mr. BROYHILL). I assure you that had I a vote on the floor of this distinguished body I would cast it with the gentleman from Virginia. I, of course, do not have a vote; I hope that this Congress will do something about this situation before this session of the 92d Congress ends so that in the next session the nearly 800,000 residents of our Nation's Capital may have both a voice and a vote in this august body.

I commend Mr. BROYHILL for his authorship and support of this legislation in behalf of the teachers of our city. I trust that he and all of my colleagues in the House in supporting the bill for genuine self-government which the people of this city have assisted me in drafting and which I have introduced this month.

Mr. McMILLAN. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. SCHERLE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 325, nays 4, not voting 104, as follows:

[Roll No. 185]

YEAS—325

Abbitt	du Pont	Lent
Abourezk	Dwyer	Link
Abzug	Eckhardt	Lloyd
Adams	Edwards, Ala.	Long, Md.
Anderson, Calif.	Edwards, Calif.	Lujan
Anderson, Ill.	Erlenborn	McClory
Anderson, Tenn.	Esch	McCloskey
Andrews, Ala.	Evins, Tenn.	McClure
Annunzio	Fascell	McCollister
Archer	Findley	McCormack
Arends	Fisher	McDade
Ashley	Flood	McDonald, Mich.
Aspin	Flowers	McFall
Aspinall	Flynt	McKay
Badillo	Foley	McKevitt
Begich	Forsythe	McKinney
Belcher	Fountain	McMillan
Bell	Fraser	Macdonald, Mass.
Bennett	Frelinghuysen	Madden
Bergland	Frenzel	Mahon
Betts	Frey	Mailliard
Bevill	Fulton, Pa.	Martin
Bingham	Fuqua	Mathias, Calif.
Blackburn	Garmatz	Mayne
Blanton	Gaydos	Mazzoli
Blatnik	Giaimo	Meeds
Boggs	Gibbons	Melcher
Boland	Gonzalez	Metcalfe
Bolling	Goodling	Michel
Bray	Green, Oreg.	Miller, Calif.
Brinkley	Griffin	Miller, Ohio
Brooks	Gross	Mills, Ark.
Broomfield	Grover	Minish
Brotzman	Gubser	Mink
Brown, Mich.	Gude	Mitchell
Broyhill, N.C.	Haley	Mizell
Broyhill, Va.	Hall	Mollohan
Buchanan	Hamilton	Monagan
Burke, Fla.	Hammer-schmidt	Montgomery
Burke, Mass.	Hanley	Moorhead
Burleson, Tex.	Hansen, Idaho	Morgan
Burlison, Mo.	Harsha	Morse
Burton	Hathaway	Mosher
Byrnes, Wis.	Hawkins	Moss
Byron	Hays	Murphy, Ill.
Cabell	Hébert	Myers
Caffery	Hechler, W. Va.	Natcher
Camp	Heckler, Mass.	Nedzi
Carter	Helstoski	Nelsen
Casey, Tex.	Henderson	Nichols
Cederberg	Hicks, Mass.	Obey
Celler	Hicks, Wash.	O'Hara
Chamberlain	Hillis	O'Konski
Chisholm	Holifield	Passman
Clark	Horton	Patman
Clausen, Don H.	Hosmer	Patten
Clawson, Del	Howard	Pelly
Collier	Hungate	Perkins
Collins, Ill.	Hunt	Peyser
Collins, Tex.	Hutchinson	Pike
Colmer	Ichord	Pirnie
Conable	Jacobs	Poage
Conte	Jarman	Poff
Coughlin	Johnson, Calif.	Powell
Crane	Jonas	Preyer, N.C.
Daniel, Va.	Jones, Ala.	Price, Ill.
Davis, Wis.	Jones, N.C.	Price, Tex.
Dellenback	Jones, Tenn.	Pryor, Ark.
Dellums	Karth	Pucinski
Denholm	Kazen	Quie
Dennis	Kee	Quillen
Dent	Keith	Railsback
Derwinski	Kemp	Randall
Dickinson	King	Rangel
Dingell	Koch	Rees
Dow	Kuykendall	Reid, Ill.
Dowdy	Kyl	Reid, N.Y.
Downing	Kyros	Reuss
Drinan	Landrum	Rhodes
Duncan	Latta	Riegle
	Leggett	Roberts
	Lennon	Robinson, Va.
	Robison, N.Y.	Sikes
	Rodino	Skubitz
	Roe	Slack
	Rogers	Smith, Calif.
	Roncalio	Smith, Iowa
	Rooney, N.Y.	Snyder
	Rooney, Pa.	Spence
	Rosenthal	Springer
	Roush	Stafford
	Rousselot	Stanton, J. William
	Roy	Stanton, James V.
	Roybal	Steiger, Ariz.
	Runnels	Steiger, Wis.
	Ruppe	Stephens
	Ruth	Stokes
	Ryan	Stubblefield
	Sarbanes	Sullivan
	Satterfield	Talcott
	Saylor	Teague, Calif.
	Scherle	Teague, Tex.
	Schneebeli	Terry
	Schwengel	Thompson, Ga.
	Scott	Thompson, N.J.
	Sebelius	Thomson, Wis.
	Seiberling	Thone
	Shipley	Tiernan
	Shoup	Ullman
	Shriver	Van Deerlin
		Vander Jagt
		Vanik
		Veysey
		Vigorito
		Waggonner
		Waldie
		Wampler
		Watts
		Whalen
		White
		Whitehurst
		Whitten
		Widnall
		Wiggins
		Williams
		Wilson, Charles H.
		Winn
		Wright
		Wyatt
		Wylie
		Yates
		Yatron
		Young, Fla.
		Young, Tex.
		Zion

NAYS—4

Abernethy	Rarick
Mathis, Ga.	Schmitz

NOT VOTING—104

Addabbo	Edmondson	Mann
Alexander	Edwards, La.	Matsunaga
Andrews, N. Dak.	Eilberg	Mikva
Ashbrook	Esheleman	Mills, Md.
Baker	Evans, Colo.	Minshall
Baring	Fish	Murphy, N.Y.
Barrett	Ford, Gerald R.	Nix
Biaggi	Ford, William D.	O'Neill
Biester	Fulton, Tenn.	Pepper
Bow	Galifianakis	Pettis
Brademas	Gallagher	Pickle
Brasco	Gettys	Podell
Brown, Ohio	Goldwater	Purcell
Byrne, Pa.	Grasso	Rostenkowski
Carey, N.Y.	Gray	St Germain
Carney	Green, Pa.	Sandman
Chappell	Griffiths	Scheuer
Clancy	Hagan	Sisk
Clay	Halpern	Smith, N.Y.
Cleveland	Hanna	Staggers
Conyers	Hansen, Wash.	Steed
Corman	Harrington	Steele
Cotter	Harvey	Stratton
Culver	Hastings	Stuckey
Daniels, N.J.	Hogan	Symington
Danielson	Hull	Taylor
Davis, Ga.	Johnson, Pa.	Udall
Davis, S.C.	Kastenmeier	Ware
de la Garza	Keating	Whalley
Delaney	Kluczynski	Wilson, Bob
Devine	Landgrebe	Wolff
Diggs	Long, La.	Wydler
Donohue	McCulloch	Wyman
Dorn	McEwen	Zablocki
Dulski		Zwach

So the bill was passed.

The Clerk announced the following pairs:

Mr. O'Neill with Mr. Gerald R. Ford.
Mr. Delaney with Mr. Sandman.
Mr. Addabbo with Mr. McEwen.
Mr. Brasco with Mr. Bob Wilson.
Mr. Matsunaga with Mr. Andrews of North Dakota.
Mr. Stratton with Mr. Bow.
Mr. Hull with Mr. Harvey.
Mr. Kluczynski with Mr. Devine.
Mr. Carey of New York with Mr. Wydler.
Mr. Murphy of New York with Mr. Nix.
Mr. Byrne of Pennsylvania with Mr. Ware.
Mr. Brademas with Mr. Ashbrook.
Mr. Biaggi with Mr. Smith of New York.
Mr. Mikva with Mr. Clay.
Mr. Daniels of New Jersey with Mr. Hogan.
Mr. Donohue with Mr. Landgrebe.
Mr. Edmondson with Mr. Keating.
Mr. Gettys with Mr. Baker.
Mrs. Grasso with Mr. Conyers.
Mr. Purcell with Mr. Goldwater.

Mr. Pickle with Mr. Brown of Ohio.
Mr. Zablocki with Mr. Johnson of Pennsylvania.
Mr. Wolfe with Mr. Halpern.
Mr. Taylor with Mr. Whalley.
Mr. Barrett with Mr. Eshleman.
Mr. Cotter with Mr. Minshall.
Mr. Danielson with Mr. Pettis.
Mr. Rostenkowski with Mr. Steele.
Mr. St Germain with Mr. Wyman.
Mr. Green of Pennsylvania with Mr. Biester.
Mrs. Griffiths with Mr. Clancy.
Mr. Fulton of Tennessee with Mr. Fish.
Mr. Eilberg with Mr. Diggs.
Mr. Evans of Colorado with Mr. Zwach.
Mr. Dulski with Mr. Hastings.
Mr. Sisk with Mr. Mills of Maryland.
Mr. Hanna with Mr. Cleveland.
Mr. Kastenmeier with Mr. Gallagher.
Mr. Carney with Mr. Galifianakis.
Mr. Gray with Mr. Hogan.
Mr. Podell with Mr. Long of Louisiana.
Mr. Alexander with Mr. Harrington.
Mr. Chappell with Mr. Corman.
Mr. Culver with Mr. Davis of South Carolina.
Mr. de la Garza with Mr. Udall.
Mr. Stuckey with Mr. Staggers.
Mrs. Hansen of Washington with Mr. Steed.
Mr. William D. Ford with Mr. Scheuer.
Mr. Dorn with Mr. Edwards of Louisiana.
Mr. Baring with Mr. Pepper.
Mr. Mason with Mr. Symington.

Mr. POAGE changed his vote from "nay" to "yea."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL STATEMENT

Mr. DU PONT. Mr. Speaker, last Thursday, July 8, I had the honor of delivering a eulogy for the late Dorothy Andrews Kabis, 33d Treasurer of the United States, in Odessa, Del. Consequently I was absent for business that day. Had I been present, I would have voted yea on roll No. 182, on the amendment offered by the gentleman from Ohio (Mr. WYLIE) and would have voted no on roll No. 183, on the amendment offered by another gentleman from Ohio (Mr. VANIK), the two amendments offered in the consideration of H.R. 8181. On roll No. 184, I would have voted "yea" for the passage of H.R. 9093.

HAVE A LITTLE PRIDE

(Mr. HALEY asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and include extraneous matter.)

Mr. HALEY. Mr. Speaker, for many years, William Fred Jackson has rendered excellent service not only to the citizens of our hometown of Sarasota, but also to the people of the other Florida counties in which his weekly newspaper is distributed. Today I am placing in the CONGRESSIONAL RECORD Mr. Jackson's lead editorial of July 2, entitled "Have a Little Pride." Although Bill Jackson's advice is addressed to the residents of the Newtown community in Sarasota, this colored leader's advice should be heeded by all citizens who come within range of the Weekly Bulletin's circulation. As a matter of fact, it should be heeded by all who read this RECORD.

HAVE A LITTLE PRIDE

Now that Newtown is well under its way to becoming the community we can be proud of, we should stop and take a little pride in our surroundings. Our streets are nearly completed and covered with our trash. Our sidewalks are down and are already littered with our negligence. Our curbs and gutters are finished and filled with our ignorance.

We should by all means work together to make Newtown a place of beauty and sophistication. Our problem for many years has been the sheer negligence we show our own property as well as that belonging to our city.

The new housing area located on Central has already felt the blow of our ignorance. Parents have permitted their children to break windows and pull down screens. Just because you ran wild in your youth is no reason your children should grow up idiots. Many of us try and there the mass that doesn't actually care whether the many programs set to make life in Newtown a place of pleasure succeed or fail.

Given a chance, the many citizens of our fair community would casually sit back and watch our Newtown recede into nothingness.

Take a little pride and clean your yard or pick up that can your child keeps kicking up the street.

Take a little pride and wash your windows or buy a garbage can because your yards are littered to the maximum. Take a little pride and sweep your walk, that maybe the reason your children are always the dirtiest in your neighborhood.

Take a little time out and look at yourself. Let the dogs rest one evening and walk through your community. A little concern and a little pride could make Newtown the jewel of our city.

CBS AND "THE SELLING OF THE PENTAGON"

(Mr. VANIK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, I expect to vote against the contempt citation against CBS and its president.

From all I can determine substantially all of the information demanded by the subpena is either in committee files or can be obtained without use of the subpena. The demand for a subpena is made on grounds which I believe are arbitrary and picayune.

I witnessed three separate showings of "The Selling of the Pentagon." In my judgment it was a substantially correct documentary.

If contempt is justified against CBS for the preparation and the broadcast of "The Selling of the Pentagon," it should also be applied to the Department of Defense for spending public funds to influence Congress and to promote defense spending.

The right of the public to know how taxpayer dollars are spent is no less important than the right of the Congress to know how a television documentary is assembled.

The purposes of the documentary were salutory and in the public interest. I refuse to support a suppression of the zeal of the press and the communication media to probe and search out abuse in public affairs and folly in public spending.

TRIBUTE TO LEE TREVINO

(Mr. WHITE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WHITE. Mr. Speaker, I am sure my colleagues would be surprised today, if I did not remind them that the No. 1 figure in sports, the man whose picture appears on the cover of Time magazine today, is a fellow Texan, and a fellow resident of the Proudest City in America today, El Paso, Tex. I can also say with pride that Lee Trevino is a fellow veteran of the Marine Corps.

Lee Trevino made golf history when he won, in turn, within the space of 3 weeks, the United States Open, the Canadian Open, and the British Open. He is also making history as a great sportsman—a great, likeable human being. He likes to win, and affects no false modesty when he is successful. He does not like to lose, but when he loses, he blames no one but himself.

Mr. Speaker, there had been comments in the press about the behavior of the British gallery, so, in his interview following his victory, Lee took occasion to comment on the good behavior of the gallery.

The golf world will talk for years about the calm courage of this great sportsman who rallied from a double bogey on 17 to a birdie on 18, to win a one stroke victory over a great competitor.

Lee Trevino is proud of his Mexican-American heritage. He laughingly accepts the title "Supermex" with the rich humor that has opened a new era in a game that is sometimes considered "stuffy." Today, it's everybody's game, and Lee Trevino is everybody's hero.

NEW PEACE OFFER IS FOR SENATE DOVES

(Mr. DENNIS asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and include extraneous matter.)

Mr. DENNIS. Mr. Speaker, we may be hopeful that the allegedly new proposals by the Vietcong actually contain something new, but we must remember:

First, that this is a demand for the setting of a withdrawal date, "without posing any condition"—a thing this House has rejected and which a current poll of my own district rejects by approximately 80 percent; and

Second, that these proposals include provision for some sort of coalition government, pending elections—a thing always basically unacceptable to the United States.

The allegedly new Vietcong proposals seem to be directed at American doves—particularly in the other body—at least as much as they may indicate any intent of serious negotiation.

I commend to the attention of my colleagues a recent column by William S. White, which points up this situation, and which I insert in the RECORD at this point:

NEW PEACE OFFER IS FOR SENATE DOVES

(By William S. White)

WASHINGTON.—The North Vietnamese have made another offer of peace in the Viet

Nam war that is ostensibly directed to the United States government, but is in reality addressed to the doves in the Senate.

The Nixon administration does not dare to brand this fresh Communist thrust for what it is—a Communist demand for an unconditional surrender and a total abandonment of the commitment of five American Presidents to South Viet Nam.

HERE ARE TWO REASONS

There are two reasons for this state of affairs.

One is that the administration is bruised from all too many encounters with its peace critics here at home and knows that to spurn this new Communist rubbish outright would be to open itself to their old litany that Washington is simply inflexible.

The other is that the President and his associates—not to mention John F. Kennedy, Lyndon Johnson, Harry Truman and Dwight Eisenhower as his predecessors—are under siege by the Pentagon Papers pilfered by Daniel Ellsberg to the point where all of them have been or will be made to appear either foolish or against peace.

Moreover, there may be even a third reason why the State Department is acting as tho there really might be some ounce of concession in these latest Communist proposals. This government has been conducting some highly sensitive contacts with certain third party, and far from pro-American, nations—meanwhile hoping that the identities of these parties are not going to come out, thus requiring them to run for cover—and is concerned to walk in the softest way possible on every aspect of this whole business.

The Senate doves, meanwhile, are of course delighted with North Viet Nam's suggestions. For, like the doves, North Viet Nam is demanding that the United States fix a precise date for the withdrawal of all American forces from South Viet Nam. Given this and an American abandonment of the anti-Communist government in Saigon, Hanoi would, so it says, open its cages and release the American prisoners of war.

Precisely this form of approach—let Washington promise a one-sided troop withdrawal and then Hanoi surely would release our men—already has been tried in the Senate and knocked down when roll call time came. All things considered, however, the doves undoubtedly have a better chance than ever before—and they are not slow in grasping the opportunity.

THEY MAY TRY AGAIN

Sen. George McGovern [D., S.D.], a Democatic Presidential aspirant from the far left, and Sen. Mark Hatfield [R., Ore.], a maverick Republican, have already said they may have a go at yet another resolution demanding one-sided American withdrawal.

Just such a McGovern-Hatfield paper, setting Dec. 31 as the deadline for what in fact would be an unconditional American surrender, was defeated by 55 to 42 three weeks ago. But a lot has happened in two weeks to the administration and to the bipartisan supporters of the war, all of it bad, and McGovern and Hatfield may just have something this time.

If not, there are always Senators Frank Church [D., Idaho], and John Sherman Cooper [R., Ky.]. They, too, are making ready to put in "end the war" papers.

The net of it all is simply this: This government is hanging on only by its fingernails to its resolution not to run out on our pledges to South Viet Nam and not to leave there until the South Vietnamese have some chance of being able to defend themselves.

THE WAR IN SOUTHEAST ASIA

The SPEAKER. Under a previous order of the House the gentleman from California (Mr. McCLOSKEY) is recognized for 1 hour.

Mr. McCLOSKEY asked and was given permission to revise and extend his remarks and to include extraneous matter.)

Mr. McCLOSKEY. Mr. Speaker, a few days ago I had the opportunity to read a copy of a speech made on June 26, in the city of Burlingame in my district, by my colleague from California, the gentleman from Santa Clara County, Mr. GUBSER. The gentleman was kind enough to title his speech, "Neo-McCarthyism and the New Left," thereafter arguing that the McCarthyism of the early 1950's had become "McCloskeyism," and concluding: "Neo-McCarthyism, now McCloskeyism, has served the cause of the New Left." The thrust of the gentleman's remarks was specific: in speeches about Southeast Asia I had been guilty of libeling the image of the United States with "half truths and distortion," in particular with respect to the allegation that the United States has been guilty of first, "indiscriminate bombing of civilians in Laos," and second, "war crimes like those for which the Nuremberg trials decreed the penalty of death."

Both my allegations and my colleague's comments constitute serious charges, and I have taken this special order today, inviting the gentleman from Santa Clara County to share in a discussion of the issues involved so that the record of debate may be as complete as possible on a matter of grave national concern—U.S. policies and actions in the destruction of rural villages in Laos and Vietnam.

I think it regrettable when legislators, each sincere in their beliefs, extend their disagreement to attacks on the personal integrity of those with whom they disagree. The issues on which reasonable minds differ today are too important to the Nation to be clouded by attacks on the motives and veracity of those who espouse opposing views. We confuse the merits of the issues when we lapse into personal attacks on one another.

I believe this is why we have long had rule XIV in the House, requiring that a Member, in speaking to the House: "Shall confine himself to the question under debate, avoiding personality."

In earlier days, accusations of untruthfulness resulted in canings, fisticuffs, and duels. These hardly add to the legislative process, but sharp debate quite often can. In precise cross-examination and heated debate, I believe our democratic processes achieve the highest chance of ascertaining truth, the most elusive goal of all our deliberations. Until his recent personal attacks, I had considered my colleague a friend; I hope we can resume that friendship. He is an able Member of Congress despite our disagreement. I feel the Nation is particularly indebted to him for his leadership last year in forcing an end to the secrecy which for so long attended our teller vote procedure.

At the outset, I want to say that no part of my concern relates to the fact that these charges were made in my congressional district rather than elsewhere. It seems to me that our constituents elect us to represent the Nation as well as our own districts; in seeking to represent or stimulate national opinion and debate, I believe that none of us should be restrained from our honest expression of opinion in another's district. The issues are national issues; advanced technology in media communication causes the transmission of our words nationally, and honesty and candor requires that we be willing to say frankly in one place that which we say in another.

The greatest need in America today is for a restoration of public faith in our government and those of us privileged to serve in that government. Outspoken expression of controversial views can only serve to bring the real issues out in the open, stimulate the citizenry to participation in the electoral process, and hopefully, reaffirm the basic principle of democracy that we will accept the verdict of the ballot box more easily, knowing that the voters have been fully informed of both sides of an issue, and that their decision is thus more likely to have been a wise one.

With this in mind, and looking forward to vigorous debate this afternoon with my more experienced and skillful colleague, I would like to take up his specific charges. I have appended his entire speech of June 26 as exhibit A to these remarks. I will take up first his contention that I am inaccurate in suggesting the United States has been guilty of "war crimes like those for which the Nuremberg trials decreed the penalty of death."

I. THE DESTRUCTION OF RURAL HAMLETS OF VIETNAM, A VIOLATION OF THE PRINCIPLES OF NUREMBERG?

At Nuremberg, in 1945, Supreme Court Justice Robert Jackson presented the U.S. position that there would be no war crime agreement and trials unless it was agreed that the definition of the various "war crimes" extended to the activities of all nations, not just Nazi Germany. The Russians were understandably reluctant to agree to this proposal; they, after all, had been involved in certain operations such as the Katyn Forest massacre which hardly could stand close public and legal scrutiny. Nevertheless, the Russians finally conceded this point, and by agreement among the four Allied Powers, it was established that the term "war crimes" would include: "wanton destruction of villages, and the forcible relocation of civilian population."

We thereafter tried a German general, Alfred Jodl, for a number of offenses, one of which was the forcible relocation of 100,000 Norwegians, and the destruction of their villages in northern Norway. General Jodl had ordered these actions on the basis that the people and villages involved might provide the base for partisan activity against the occupying Germany Army, and for support of commando raids against the northern Norwegian coast.

General Jodl was found guilty of "the wanton destruction of villages and the forcible relocation of villagers" and was sentenced to death.

In America, a nation whose claim to a government of law, not men, is built on the acceptance of legal precedent; a nation which has undertaken to lead the world toward peace under rules of law, we can scarcely claim that we are not bound, morally if not legally, to honor the Nuremberg principles.

What, then, has been our practice with

respect to the villages of South Vietnam? The evidence is clear and unchallenged. From 1965 until fairly recently, we have pursued policies called "search and destroy," "free fire zone," "rice denial" and "generation of refugees."

Faced with an insurgency war conducted by people indigenous to their rural valleys and villages, an insurgency war where the guerrilla was to his village as the fish to the water, we sought to pacify the countryside of South Vietnam by destroying every village which we could not hope to control in normal military operations and occupation. Our goal was to bring the population under Government control.

To do so, we felt it necessary to destroy the villages in those areas which were adjacent to the Vietcong's jungle headquarters areas, or which were too far from the road network and military bases which we were able to control.

In one province, Quang Nam, we destroyed 307 or 555 hamlets which originally dotted the countryside. In many other provinces, the results were the same. In Quang Tin Province, Quang Ngai Province, Binh Dinh Province, half or nearly half of the rural hamlets have been deliberately burned by U.S. infantry forces or destroyed by massive aerial bombardment and artillery firepower.

My esteemed colleague from Santa Clara County once personally endorsed the journalistic efforts and accuracy of a Helen Emmerich, whom he successfully sponsored in Vietnam while a member of the House Armed Services Committee.

Mrs. Emmerich described one search and destroy mission she observed in 1969 in I Corps, 20 miles south of Da Nang, with the 5th Marine Division, in the following language:

At dusk the helicopters came, scurrying over the village, dropping thousands of leaflets on the hootches, into the rice paddies below.

Colonel William Kitterman said they were warning leaflets, urging villagers to move out before dark.

No one came out . . . Lord, I thought, why don't they walk out of there.

Kitterman . . . looked at me. "Well, they had their chance. Now we just assume they're VC."

All of them? The old man whose back was bent to the earth, the children seen running in the market place.

"Yes, all of them."

We entered the village . . . the stench was sickening.

Five bodies sprawled in the market place. Eyes stared out from gaping sockets. The sun ricocheted off staring eyeballs. Black blood congealed on broken limbs. Two shriveled old men, two withered old women. A girl about 12 years old.

(at Da Nang) I finally asked a gunnery sergeant why the villagers hadn't come out after the leaflets were dropped.

He took a hard drag on his coffee, looked around, then whispered to me, "Look, don't say I told you this—but don't you know—they couldn't read the leaflets."

Eighty-five per cent of the people in Viet Nam can't read.

When I returned from South Vietnam for the first time in 1967, I talked to several California lawmakers about the search and destroy missions and other horrors. One was Charles S. Gubser (Rep-Gilroy).

I saw Gubser in Washington. As Vice Chairman of the Armed Services Committee, I was sure he would be especially interested in Operation Arizona and other similar operations. Gubser told me there was nothing that a congressman could do, "our powers have been usurped by the Executive Branch."

I have appended Mrs. Emmerich's entire article and some of the gentleman from Santa Clara County's laudatory comments as exhibit B to these remarks.

This incident was not an isolated one. On three separate visits to the northern provinces of South Vietnam, in 1968, 1970, and 1971, I have personally followed the planning and observed the results of rice denial, refugee generation and search and destroy operations. I have flown over hundreds of square miles in South Vietnam where hedgerows and shattered foundations are all that remain of lovely rural villages where hundreds of thousands of Vietnamese peasants once lived.

Granted, these villages were capable of furnishing, and did furnish, support, food, hospital care and concealment to the Vietcong, just as the Norwegian villages destroyed by General Jodl were capable of furnishing support to Norwegian partisans against the German Army of Occupation.

But what is the difference between deliberately destroying Norwegian villages and relocating their population, and destroying Vietnamese villages and relocating their population many miles away in refugee camps?

I have never found an American officer, military or foreign service, who is willing to admit that our command structure in Vietnam ever even considered the question as to whether we were violating the rules we had established at Nuremberg when we deliberately destroyed thousands of rural hamlets in South Vietnam.

We now contend that 93 percent or more of the population of South Vietnam is living under government control. Our military people have admitted, however, that this has been accomplished only by the destruction of the villages where much of the population once lived, and by forcibly relocating the inhabitants to camps located within the immediate control of United States and South Vietnamese military bases.

These facts are not questioned. The gentleman from Santa Clara County was part of the House subcommittee which investigated the Mylai massacre. He has seen with his own eyes, not only Mylai, but at least half the other hamlets of Quang Ngai Province which have been deliberately destroyed by our infantry and firepower.

I have brought some pictures today which were taken on my most recent visit to Vietnam in April; if there is any doubt as to what American aggressiveness, technology, and firepower can do to a rural Vietnamese hamlet, I ask you only to compare these photographs of untouched Vietnamese hamlets with those of hamlets which we have destroyed. I have several photographs of Mylai which are representative of thousands of other hamlets which to this day remain fallow and deserted.

This is the evidence upon which I base the contention that the United States has been guilty of "war crimes like those for which the Nuremberg trials decreed the penalty of death."

I make these allegations with profound sadness and shame. It has been my privilege to serve in a proud military organization, to respect, perhaps above all others, the Americans like Washington, Hamilton, and John Marshall, who created America's proud military traditions. The men like Robert E. Lee, Stonewall Jackson, A. P. Hill, Pelham, Pegram, Wade Hampton, and John B. Hood, who handed down a heritage of chivalry that has inspired thousands of Americans to cheerfully go to their deaths in places like Belleau Wood, Monte Cassino, and Iwo Jima.

I have regretted profoundly Sheridan's devastation of the Shenandoah Valley and Sherman's march through Georgia. It has always seemed to me that war could and should be waged without massive destruction of a civilian rural population whose only offense is support, sympathy, food and shelter for a people fighting against an invader. This may be an alien philosophy in days where our military strategists talk about "assured destruction" and "destruction of the will to resist." Nevertheless, I believe that my sentiments reflect a great part of the common heritage and culture of the world's greatest Nation; that we must be true to the best of our heritage, traditions and culture if we are to remain a strong and cohesive Nation with faith in ourselves and our goals.

In any event, I have tried to detail the evidence for my statement that we, the United States, have fallen, deliberately or inadvertently, into a course of military conduct, the deliberate destruction of Vietnamese villages, which violates the Nuremberg principles. Against the background of our deliberate destruction of rural villages in Vietnam, let me try to state the evidence for the second charge: that we appear to have deliberately bombed and destroyed hundreds, if not thousands, of the rural villages of Laos.

II. WHAT HAS BEEN THE U.S. BOMBING PRACTICE WITH RESPECT TO THE INHABITED VILLAGES OF NORTHERN LAOS?

I have suggested that for some period of time in 1969 and 1970, it appears that American air power was guilty of the indiscriminate bombing of Laotian villages. The gentleman from Santa Clara County charges that I have drawn a sweeping and unjustified conclusion from insufficient proof. He states:

Mr. McCloskey's total evidence is what he was told by left-wing anti-U.S. groups before he left the United States, the testimony of 16 individual refugees from seven villages, and the USIS report of refugees.

Let me start with a description of the factual situation in Laos upon which I believe both my colleague and I can agree. The facts I will describe are based on either public newspaper reports which the State Department does not contest or upon the published records of two Senate subcommittees, the Senate Refugee Subcommittee chaired by Senator KENNEDY, and the Senate Subcommittee on U.S. Security Agreements, chaired by Senator SYMINGTON. I will refer to citations from these two congressional committee hearing records as "Kennedy" and "Symington," respectively.

In 1962, the Geneva accords of that year recognized three legitimate participating groups in the Government of Laos, the royalists, the neutralists, and the Communist Pathet Lao.

Laos is a country of over 9,000 small villages and a population roughly estimated at somewhat over 2½ million people. Only five towns exceed 5,000 in population, and the great bulk of the 9,000-plus villages range from five to 50 thatch-roofed huts, with populations of 30 or 40 people up to several hundred. Eighty-five percent of the people are engaged in subsistence agriculture, either of the slash-and-burn type practiced by the mountain tribesmen such as the Meos, or the lowland rice paddy farming in the river valleys pursued by the ethnic Laos and others.

After 1962, the country was partitioned roughly in half, with the northern and eastern, more mountainous, regions under the influence of the Pathet Lao. Two areas, the Plain of Jars area in northern Laos, and a stretch of southeastern Laos along the Ho Chi Minh Trail, including the Bolovens Plateau, have been contested by the various factions and from time to time have changed hands in infantry skirmishing.

Our CIA, since 1962, has been engaged in assisting the Meo tribesmen and Royal Laotian Army against the Pathet Lao; the North Vietnamese have supported the Pathet Lao with increasing numbers of regular troops, particularly since 1968 when Vang Pao, the head of the Meo tribes and commander of Laos' 2d military region, was successful in capturing the Plain of Jars.

Since 1964, we have supported the Royal Lao forces with combat air strikes. All U.S. activities in Laos, including our air operations, are controlled by the U.S. ambassador in Laos. The bombing in 1969 and 1970 was over twice that of 1967 and 1968, with nearly a million tons of bombs dropped. About 80 percent of the bombing has taken place along the Ho Chi Minh Trail in the southeastern corner of Laos, with the remaining 20 percent in operations against the Pathet Lao and North Vietnamese in northern Laos.

In the Pathet Lao-occupied and contested areas of Laos, there are several thousand villages; Ambassdor Sullivan has said that 3,500 may be a fair estimate of their number, and it is estimated that perhaps a million people once lived in such villages, of which perhaps one-fourth were Meo tribesmen living on the mountainsides and three-fourths lowland rice farmers.

Approximately 200,000 civilians once lived in the town and villages in and around the Plain of Jars, for example, and 250,000 in the villages of the provinces of southeastern Laos through which runs the Ho Chi Minh Trail. None of these villages are considered "unfriendly." All are protected by "rules of engagement"' which consider a village as one occupied hut, and which prohibit any bombing within 500 meters of any village.

Neverthless 700,000 people from these villages, 70 percent have become refugees in the past decade, according to Ambassador Sullivan's testimony before the Senate Refugee Subcommittee on April 22, 1971.

Why?

First, let me sum up the official State Department position.

Until April 1971 the only official public U.S. Government statement on this subject was the testimony of U.S. State and Defense Department officials to the Senate Refugee Subcommittee on May 7, 1970, and to the Symington subcommittee in the fall of 1969. I would like to quote relevant portions of the May 1970 hearings before the Kennedy subcommittee first:

1. Deputy Assistant Secretary of Defense Dooling. *As I indicated, all air strikes, except some, are validated by the Ambassador to Laos, and to my knowledge, the maximum care is taken to avoid the causing of civilian casualties.* (Hearings, Senate Judiciary Committee, Subcommittee to Investigate Problems Connected with Refugees and Escapees, Senator Kennedy, Chairman, May 7, 1970, page 49.)

2. Senator KENNEDY. Now you must know from aerial photography how many villages have actually been destroyed—what the size was of villages where you take villages one day and then again the next day; you can tell where the villages were, whether they are up or down; and you can make some estimation as to whether there had been people in the village or not. Have you done any kind of work like this?

Mr. DOOLIN. Mr. Chairman, there is some information available and I will be pleased to prepare a report on the subject and submit it to you and correlate it with the rules of engagement which I will go into in much more detail either in executive session or in private correspondence. (Kennedy, page 50)

3. Ambassador SULLIVAN. Even in the area of the Ho Chi Minh Trail, where the entire area was in enemy hands, and where there were not, perhaps, very many Lao living, we maintained these rules and kept the villages out of bounds and not to be struck, *at least during the time that I was there.* (I have emphasized this last comment because Ambassador Sullivan, after 4½ years, was relieved of his post in March, 1969, shortly after President Nixon took office, to be replaced by Ambassador Godley, who is presently still Ambassador to Laos.)

I did have photographic evidence after these strikes brought back to see if there had been any violation of the rules. (Kennedy, page 50)

4. Senator FONG. And everytime there was bombing you knew about it?

Ambassador SULLIVAN. Yes, sir, we had to authorize any targets that were to be bombed.

Senator FONG. And on fixed targets, you had fixed circles around them, indicating places where they couldn't bomb?

Ambassador SULLIVAN. That's right.

Senator FONG. In those bombing episodes you were always informed?

Ambassador SULLIVAN. I had to validate the target.

Senator FONG. You always had to approve it?

Ambassador SULLIVANS. That's right and if it were a town we would not validate it. (Kennedy, page 59)

* * * * *

Senator FONG. Now in the time you were there, five years, were there any response on the part of the Royal Lao Government indicating that you had gone beyond your bombing lines?

Ambassador SULLIVAN. Yes, there were two or three occasions when villages were hit by mistake. . . .

Senator FONG. Outside of those two or three instances, were there other instances?

Ambassador SULLIVAN. Yes, there were. . . . We are talking about the villages on the friendly side . . . in the instances where the accidents were on the other side we sent immediately, of course, for Air Force Investigation, or Navy investigation, depending on the source of the aircraft, as to how this happened. (Kennedy, pages 50–60)

Senator KENNEDY. After you find out either that there are or have been accidents made either in friendly or unfriendly territory in which villages have been bombed, you say there is an investigation made by the armed services. . . .

Mr. DOOLIN. If there were a mistake, the investigation establishes whether there was a mistake and as the Ambassador indicated the number of these incidents that have been checked out and established as errors have been remarkably small. . . . (Kennedy, page 61)

5. In a letter submitted to the Kennedy subcommittee by the State Department on April 13, 1970, the following appears: "To what extent does the application of these concepts and tactics (U.S. operations, including bombing) contribute to the generation of refugees and the occurrence of civilian war casualties?

"Studies of refugee attitudes undertaken by the RLG and USAID have shown that no single reason operated to cause a Lao, of whatever ethnic background, to leave his place of habitual residence and move elsewhere, and it has not proven possible to categorize refugees or casualties as having been created by any specific technique of battle."

One of the most ironic exchanges of the May 1970 hearings was the concluding colloquy between Senator KENNEDY and Ambassador Sullivan:

Senator KENNEDY. I wonder how the Ambassador has much time for anything else if he is giving all of this personal attention to the clearance of bombing targets and then reviewing the next day where they hit, looking at the aerial photographs, and getting prepared for the next day's targets. It seems to me to be a full-time job.

Ambassador SULLIVAN. It took all my time. (Kennedy, Page 62.)

In summary, the Senate subcommittee hearings of May 1970 clearly established a State/Defense position that villages were not permitted to be bombed; that only a few had been bombed by mistake; the Ambassador was always informed of the bombing of villages; he had to validate targets in advance and he would not validate villages as targets; the Ambassador had photographs taken after air strikes to make sure the villages had not been bombed; from refugee attitude surveys it had not been possible to categorize bombing as an identifiable reason to cause people to leave their homes and become refugees.

When the Senate refugee subcommittee met again, on April 21 and April 22, 1971, nearly a year later, some additional information was provided by the Government witnesses.

With reference to one small group of refugee settlements, Ambassador Sullivan testified:

As I understand it . . . their villages were hit both by ground operation and then later on, *when they were out of them,* apparently their villages were damaged by bombing . . . (Emphasis added.) (Kennedy, Part II, page 36.)

Ambassador Sullivan cited one statement from the State Department testimony at the 1970 hearing:

Most Lao civilians learn very quickly that bombing necessarily follows the North Vietnamese, and another, others fear the Lao and American bombing of the Communist zones.

As evidence that the State Department had not denied that some refugees at least had left their homes because of the bombing.

The Ambassador went on to state, however, that—

Only about 20,000 have come out of the

area where bombing has taken place. (Kennedy, Part II, page 40)

Ambassador Sullivan further conceded:

The (bombing) attacks in Northern Laos we do not consider to have to do with the operations in South Viet Nam or Cambodia.

The Ambassador further clarified that there is no such thing as an enemy village, or unfriendly village in Laos, all villages were apparently considered friendly, whether in Pathet Lao-occupied territory or not, but specifically, the Ambassador confirmed that in Pathet Lao areas:

If they are inhabiting a village, they are not a military target. (Kennedy, Part II, page 55)

The Ambassador did state that in 1969 and 1970 there was quite a considerable increase in the targeting in Northern Laos—Kennedy, part II, page 60—but he steadfastly maintained that only a minor portion of the refugees, 20,000 out of 700,000 had come from areas where bombing had taken place.

If this testimony is correct, then of course, my own statements are incorrect, and the gentleman from Santa Clara County properly challenges them.

We have seen in the past few weeks, however, with the publication of the Pentagon papers, that administration representations to the Congress are sometimes deserving of careful and independent scrutiny. In the case of the overthrow of Premier Diem in 1963, the events preceding the Tonkin Gulf episode in August 1964, the escalation of mission of the Marines at Danang in 1965, in all of these instances State Department advice to Congress was perhaps a little less than complete and comprehensive, to put the matter in its most charitable light.

The central question is not State Department policy, but what American bombing practices have actually been pursued with respect to the inhabited villages of northern Laos?

I have said we appear to have been guilty of the indiscriminate bombing of civilian Laotian villages. My colleague charges this is neo-McCarthyism, and that I have drawn "a sweeping and unjustified conclusion from insufficient proof."

He goes on to state:

Mr. McCloskey's total evidence is what he was told by left-wing anti-war groups before he left the United States, the testimony of 16 individual refugees from 7 villages, and the USIS report on refugees.

First of all, the gentleman errs; there is a great deal more evidence of indiscriminate bombing of Laotian villages than from the three sources he identifies. Let me list the evidence upon which I rely:

First, the Christian Science Monitor can hardly be considered a left-wing publication. The first article I recall reading on Laotian bombing was written following a visit to four separate refugee camps by Daniel Southerland, and appeared in the Monitor on March 14, 1970. A full copy of that article is appended as exhibit C to these remarks, but some significant quotes are set forth here:

After questioning a large number of them (the refugees) it was possible to get a picture of the devastation unleashed by American fighter-bombers in northeastern Laos over the past two years and it is not a pretty one . . . After the U.S. halted its bombing of North Viet Nam on Nov. 1, 1968, it stepped up as much as 10-fold its bombing raids . . . against Pathet Lao-occupied northeastern Laos . . . The number of bombing sorties by U.S. Air Force and Navy jets rose to as much as 300 per day. The refugees said about 9 out of 10 of the bombing strikes were carried out by American jets . . . the bombings forced people to move out of their homes and into trenches, caves and bunkers where they lived for the most part of two years.

The refugees said the bombs flattened many villages in and around the plain and heavily damaged others. *They said no villages they knew of escaped the bombing* . . . in many bombing raids there were no Pathet Lao or North Vietnamese troops near their villages. (Emphasis added).

In 1969 they said they saw the bombers every day when the weather was clear, sometimes so often they could not count the number of raids. *The planes tended to fire at anything that moved,* they said. (Emphasis added).

It is impossible to get the United States Government side of the argument in any detail because American officials refuse to discuss except in the vaguest generalities the activity in Laos. The pilots . . . are instructed not to discuss the details of their missions.

Second. On May 9, 1970, Carl Strock, an AP and Newsweek reporter who had resided in Ventiane for some years, published an article in the New Republic.—Exhibit D. The following quotes appear in that article:

At the end of 1968, American bombers were diverted from North Viet Nam to Laos and began systematically depopulating Pathet-Lao-controlled territory.

In mid-1969 air strikes were escalated to their present high-level of 15,000 sorties, a month . . . the U.S. carried out a saturation bombing campaign on the Pathet-Lao-controlled Plain of Jars . . .

Third. A Life magazine article of April 3, 1970, exhibit E by Hugh D. S. Greenway contains the following quote:

As the war goes on, so does the misery inflicted upon the Laotian people. Refugees from the Pathet-Lao zone all tell harrowing tales of entire villages living in caves and holes in the ground, farming their rice by night in order to escape the bombing. *From all reports, the wholesale bombing of civilian centers in the Pathet Lao areas goes beyond anything the North Vietnamese have experienced.* (Emphasis added).

In addition to these press reports, there has been specific corroboration of U.S. bombing by U.S. personnel in Laos. Our colleague from Santa Clara may not have read Mr. Ronald J. Rickenbach's testimony before the Senate Refugee Subcommittee in May 1970. Mr. Rickenbach, a former AID employee testified:

While I served in Laos . . . I had occasion to hear of many, but actually dealt personally with four incidents, of civilian areas which were targeted by American jet-type aircraft. (Kennedy, page 26)

The description of the four incidents Mr. Rickenbach was personally involved in is appended as exhibit F to these remarks, but involved small villages in Khammovane province near the North Vietnamese border in three cases, and civilian traffic on a bridge between Thakkek and Savannakhet provinces in a fourth. These areas are in central Laos, some distance away from the Plain of Jars area which is located in Xieng Khouang Province.

Thus far, I have cited public press articles and official Government testimony before the Senate refugee committee from the spring of 1970. What additional evidence do we find from the hearings before the same committee in April of 1971

First of all, Senater KENNEDY commented on his concern as to why the State Department had refused to furnish his subcommittee with a report dated July 10, 1970. The Senator stated, on April 22, 1971:

We have been, virtually since last August, trying to get this information. And, finally, yesterday, at the start of the hearing it was suddenly made available to us by the Secretary of State. (Kennedy, Part II, page 33)

What was in this report to the U.S. Embassy in Laos from the U.S. Information Service in Laos that would cause the State Department to withhold it from the Congress for over 9 months?

Let me summarize from the report itself: 213 villagers from 96 separate villages in 17 different townships were interviewed. The following quotes are taken directly from the report, a complete copy of which is found at pp. 16342–16344 of the CONGRESSIONAL RECORD of May 20, 1971.

First. Seventy-five percent of 190 respondents said their homes had been damaged by bombing.

Second. Seventy-six percent said the attacks took place in 1969.

Third. Ninety percent of 212 respondents said the bombing made life difficult for them, 63 percent of this group told our interviewers that they were prevented from carrying on more than a bare subsistance living during the most intense periods of bombing.

Fourth. The bombing is clearly the most compelling reason for moving.

A second refugee report, apparently taken about the same time covered 97 refugees from Luang Prabang and Sam Neua Provinces. A complete copy of that report is found at pp. 16343–16344 of the CONGRESSIONAL RECORD of May 20, 1971.

The second report showed a lesser percentage of people who had been bombed; 69 percent said they had seen bombs dropped frequently; 25 percent had seen people killed by bombing; 32 of the 97 people interviewed said the bombing made life very difficult for them—80 percent of this group saying they could not eke out more than a bare subsistence living after the attacks started.

Thus far, then, the evidence from two Government reports, plus the testimony of an ex-AID officer confirms that bombing of civilians occurred in at least six of the provinces of Northern Laos.

The statements of the 16 refugees from seven villages in Xieng Khouang Province interviewed by Congressman WALDIE and myself last April admittedly does little more than confirm the accuracy of the USIS report about one province, Xieng Khouang.

Nevertheless, that testimony squarely contradicts Ambassador Sullivan's statement on April 21, 1971, that—

Their villages were hit both by ground operations and then, later on, when they

were out of them, apparently their villages were damaged by bombing.

The refugees with who Congressman WALDIE and I talked were unanimous in stating that their villages were destroyed before they left the area. They showed us wounds from cluster bomb—CBU—shrapnel and white phosphorous. In all but one of the seven villages, people had been killed. In all of the villages, every house had been destroyed.

The State Department's own report of the Xieng Khouang province refugees confirms that the villages were bombed when the villagers still lived in them.

The first interview appended to the report quotes Thao Vilay, a 25-year-old from the village of Kan Phoun. He was quoted as follows:

I saw planes come to attack my village in 1965 for the first time; the village come under attack many times in 1968–69, resulting in 5 killed and 3 wounded. Apart from my own village there were 42 killed at Ban Thoun and Phonsavan.

Then I was assigned back to my village at the time when the bombing was at its peak. It was so bad that you could no longer lead a normal life. Until 1969, I had at least been able to cultivate my own rice field, but the war and the bombing had now become so severe that life was no longer bearable.

The second person interviewed, a lady from the village of Kang Pa stated:

The reason she came to Vientiane was because of the bombing. The planes came to drop bombs all the time.

The third interviewee, a 40-year-old man from Ban Nam Thong, whose home had been destroyed by bombing in 1970.

The fourth interviewee, a 17-year-old girl schoolteacher from Bon Koua was quoted:

The planes dropped bombs in the area of her original home very often. . . . The reason she left her village was because of the constant bombings by the planes . . . she said the planes which did the bombing belonged to the Americans.

The fifth interviewee was a 27-year-old man from Ban No Xou.

The planes started bombing his village in 1964 and continued until the present time. The bombs were sometimes dropped far away from his village and sometimes were very close to his village. . . . The bombs actually hit and destroyed his village in 1969.

The sixth interviewee was an 18-year-old girl from Ban Kou village.

She said quite a few villagers were killed and wounded by the bombing.

These six interviews were appended to the refugee report of refugees from Xieng Khouang Province. There was a second report, covering 97 refugees from Luang Prabang and Sam Neua Provinces.

82 of the people interviewed said the bombing had made life very difficult for them, 80% of this group saying they could not eke out more than a bare subsistence living after the attacks started.

Thus the two U.S. refugee studies which were withheld by the State Department until April 1971, clearly show heavy bombing of Laotian civilian areas in at least four provinces. The 1970 testimony had mentioned bombing in three others.

These are all U.S. Government documents. What does the gentleman from Santa Clara County say about this evidence? Is it indeed insufficient to indicate a deliberate U.S. policy of destroying villages in 1969? Is the bombing, so carefully targeted and approved by the U.S. Ambassador in Laos, susceptible of so many mistakes in so many different villages and provinces?

Or was the letter of 21 young IVS volunteers in Laos to President Nixon on March 15, 1971, more accurate?

The extensive bombing of civilian areas is particularly vicious . . . Refugees tell of being forced to live in holes and caves, of having to farm at night, of the systematic destruction by U.S. war planes of the human basis for a society. (This letter is found on pages 170–171 of the Senate Refugee hearings, Part II.)

The respected writer for the New Yorker, Robert Shaplen, probably as familiar with the Laotian situation as any of the American reporters who have been longtime residents of Southeast Asia, wrote in April 1970, in Foreign Affairs, about the events of the spring of 1969:

The government (of Laos) aided by the wider scope of American bombing, was doing its best to keep the communist supply lines cut and to destroy the social and economic fabric in the Pathet Lao areas.

How does one, aided by highly sophisticated bombing techniques and weapons, destroy the social and economic fabric of an area?

Might there not be some temptation to destroy the hundreds of villages around which that social and economic fabric is centered?

The facts are fairly clear:

First. Somewhere around 200,000 tons of bombs have been dropped in northern Laos in 1969 and 1970. Cluster bombs and white phosphorus have been used.

Second. B–52's have been used.

Third. There are no major cities in the Pathet Lao areas—only perhaps 3,500 small villages.

Fourth. Refugees from many of these villages confirm that the villages have been bombed—in many cases despite the fact that no Pathet Lao soldiers were in the immediate area.

Fifth. U.S. Government employees, IVS volunteers, and respected newspaper reporters have written and testified that the bombing of villages was deliberate, systematic, and intended to destroy the social and economic fabric of an area of rural villages.

To this evidence, let me add the disquieting comments of two Air Force officers with whom I discussed the situation at the Udorn Air Force Base in Thailand on April 13, 1971.

One officer, a captain in a reconnaissance squadron, showed me a map of his photographic reconnaissance mission of the day before. He had flown approximately 30 kilometers along three separate valleys at 9,000 feet, taking photographs. On a 1:50,000 map he showed me the route, and the map indicated a number of villages alongside the roads and trails, I asked him: "What about the villages?" His response, to the best of my recollection, was to the effect:

Mr. Congressman, I've been flying over Northern Laos for 4½ months now, and I've never *seen* a village up there.

An Air Force lieutenant colonel who was present added that he "didn't think there were any villages in northern Laos any more, or in the southern part of North Vietnam either for that matter."

I then circled eight villages in the map of northern Laos at random, and asked, if when I returned 2 days later, I could examine the photographs of the eight villages in question. Maj. Gen. Andy Evans, commander of the 13th Air Force, indicated he would be glad to comply with this request, and 2 days later, said they had only been able to identify pictures of two of the villages selected. In both cases, the photographs showed clearly that the villages were no longer in existence.

I asked for the photographs to bring back to Washington, and subsequently asked for pictures of 196 villages from which refugees have come.

After lengthy exchanges of correspondence, the Department of Defense has apparently decided that no photographs should be provided Congress. The letter of Deputy Assistant Secretary Doolin, of June 11, 1971, states in part as follows:

I have reflected on your various requests for photographs of villages in Laos . . .

It is neither feasible nor useful to go beyond these steps to furnish extended photography of Laos . . .

In sum I cannot see that the cause of the civilians in Laos will be advanced by our further exchange of photographs.

The full letter is appended as exhibit G.

I want to say in that connection that they had furnished me with 12 photographs of villages in Laos that apparently are still standing, and they are reflected by the red dots on this map. There is no question but that a great number of buildings in central Laos are still in existence, but the pictures of the 196 villages that we asked for have not been provided.

There is an old California jury instruction, evolved out of centuries of common law, that when a party has the power to produce evidence on an issue but declines to do so, that the evidence is presumed to be adverse to his arguments.

It is on this evidence and this inference that I voice the suspicion that we have deliberately bombed and destroyed hundreds, if not thousands of the villages of Laos. Only the photographs will determine the truth.

Mr. Speaker, I include the text of the exhibits which I previously referred to in part:

EXHIBIT A

NEO-MCCARTHYISM AND THE NEW LEFT

(Speech by Hon. CHARLES S. GUBSER, June 26, 1971)

The lead paragraph of a good news story is supposed to include the principal thrust of all that follows. Today I shall try to apply this technique in my remarks.

My subject and title is "Neo-McCarthyism and the New Left", which I would summarize in this manner: "A large and influential body of Americans is aiding the cause of the New Left by besmirching the image of this great country with reckless conclusions based upon isolated facts." Some do this knowingly, while others are simply allowing themselves to be used. Unfortunately, the latter description fits the Congressman who represents the district in which we are meeting today.

McCarthyism has long since ceased to be a word which refers to a man—it now means the practice of drawing a sweeping and unjustified conclusion from insufficient proof. The word was disdainfully coined by honest defenders of constitutional liberties and academic freedom who had a point—a republic *must* be based on the right to disagree, to speak freely, and to be protected against unjust and damaging accusation. But, ironically, the same types who coined the word and so vehemently denounced the practice are the very ones who have made it a fine art. Because it now serves their purpose of tearing down the so-called "establishment", they rationalize that their "worthy" end justifies unworthy means.

I can't pinpoint the time when it all began. Perhaps it was the early 1950's when the predecessors of today's New Left recognized the effectiveness of an aroused public conscience. Maybe it was the campaign of 1960 when they saw an almost hysterical national reaction to a "missile gap", which the successful candidate knew, I knew, and his Secretary of Defense soon admitted, was nothing but fiction. It could have been the civil disobedience and massive civil rights demonstrations which pointed the way; it could have been any number of events or points in history. Somewhere along the line the pioneers of the New Left learned the value of mass psychology.

In 1964 they struck pay dirt. McCarthyism painted Barry Goldwater as an evil man, anxious to trigger nuclear war and genocide. They told us we would be in war if he were elected. And today we know from purloined Pentagon papers leaked to the New York Times and Washington Post that the Democratic standard bearer had conceived the same strategy he falsely charged Senator Goldwater with planning.

It is important to remember several points as we watch this matter. Republicans have not deceived the American people—Barry Goldwater didn't, Dwight Eisenhower didn't, and Richard Nixon hasn't! All the deception the papers describe occurred under Democrats. What would those who criticize the Nixon Administration for not declassifying the Pentagon report which exposes the duplicity of the Johnson Administration have said if it had been officially released instead of stolen and then leaked? You know what they would have said and so do I. It would have been another example of Republicans playing politics in order to give Lyndon Johnson back his own war.

Why are some so anxious to promote a confrontation between Congress and the Nixon Administration over this now famous Pentagon report? Certainly it has historical value because it tells us how we got into Vietnam. But I thought these people were most concerned with how we get out. Obviously, like the proponents of the New Left, they wish to discredit the "establishment" and President Nixon (who has kept his promises about Vietnam), as well as Lyndon Johnson. We needn't tar President Nixon with the same brush used on President Johnson in order to know we were deceived about Vietnam. Let us not forget that this type of tangental tarring is the purpose of Allard Lowenstein and the ADA, the New Left, Common Cause, Senators Kennedy, McGovern, Muskie and Hughes, and the Democratic Party. With regret, I must say that the Congressman from this district appears to be their willing handmaiden.

But I have strayed from my theme. Let me return to it.

Nineteen sixty-four was the year of the bonanza for McCarthyism, the Big Lie, and the New Left. Barry Goldwater was defeated with lies and a wild-eyed Congress was elected in a landslide. Effective opposition to the tactics of the New Left crumbled and fell apart. In the next few years the "establishment" was condemned as having done nothing about racial discrimination, urban and rural slums, health, water pollution, housing, poverty, and a host of other social problems. Instead of the most advanced, healthiest, best-fed, most free, most affluent, and the most progressive nation in the history of mankind, this country was made to appear as calloused and stagnant, with a system of government not equal to the times. Thousands of Hippies, Yippies, New Leftists, and Revolutionaries fanned across the country. Often they were subsidized with food stamps and by local welfare programs. Some were actually on the federal payroll. We were witnessing the beginning of a revolution in which the victims would subsidize their own destruction with their own tax money. They perfected the science of protest and mob rule advocated by Saul Alinsky, Joan Baez, Angela Davis, and others. Left-wing professors joined in, clergymen preached more rebellion and less religion from their pulpilts—the New Left was on its way.

Seizing upon an unpopular war which a Democratic administration refused to win, they used the peace movement to screen and hide their true purpose of tearing down the basic institutions and principles which made this the greatest of all nations.

The next four years saw the most rapid increase in federal programs and spending for domestic purposes of any comparable period in our history.

In January 1969, billions of wasted and misdirected dollars later, thousands of fluffy and false press releases later, and hundreds of broken promises later, the Republican Administration assumed leadership with President Nixon in charge.

Did we Republicans find less racial hatred? Were the slums gone, or even disappearing, or were new ones being created? Did we have cleaner air and water? Was the housing shortage less acute? Was there less violence in the streets Had the quality of education improved? Could you enter any church in full confidence that your offering would not be used for causes like the defense of Angela Davis? Could the government of the United States operate if the rabble and trash of a generation decided it would bring that government to its knees?

The legacy which President Nixon inherited was one of disunity, fear and hate, and distrust of established institutions and of government itself.

In the face of a hostile Congress, our Republican Administration has finally offered the nation something new. It has taken action in the environmental field instead of just talking about it. It is constructively working toward an economy based upon peace while candidly recognizing that reconversion doesn't emerge like instant coffee and that in certain areas it will be temporarily painful.

Our Republican Administration has given us an alternative to the centralization which has created more problems than it ever solved. Revenue sharing is the first proposal in 40 years which seeks to reverse the trend of centralization and to renew the exercise of individual and local responsibility.

In the "square" days of the past we didn't pay our taxes and then feel morally relieved of any responsibility for our neighbor and fellowman. That spirit which we had and about which we felt good is what revenue sharing seeks to restore.

But the greatest achievement of President Nixon is in the area where the accomplices of the New Left are most critical. He is getting us out of Vietnam—with honor, and in a manner which I believe will involve the lowest sacrifice of human life.

When President Nixon left office after serving as Vice President in the Eisenhower Administration, we had 900 military advisors in Southeast Asia. He returned eight years later as President to find more than 530,000 American men in the war zone and the nation mired in an unpopular war. Today less than half that number are in Southeast Asia and more are coming out each day—nearly a battalion per month. Casualties which ranged up to the hundreds are now reported in dozens and with each week South Vietnam becomes more able to fight its own war.

President Nixon has kept every promise with respect to Vietnam. He has pledged to end our involvement—and he is ending it. But he isn't going to tell the enemy our plans in advance.

A total withdrawal date *is* a *negotiable* item, which *should* be settled at a negotiating table in Paris. To give away a negotiable item would be to condemn our prisoners of war to more years in the hands of an inhumane, arrogant enemy—held for ransom, as political hostages.

It is noteworthy that the POW issue was settled in Korea on June 8, 1953, and the fighting continued until the armistice of July 27. It is not true, as Common Cause and so many other groups would have you believe, that a POW settlement cannot be negotiated until a withdrawal date is settled.

It is my considered opinion that legislatively establishing a withdrawal date would not hasten the end of the war. In fact, it would seriously hamper President Nixon's efforts to bring it to an early end.

I have no quarrel with the sincerity of any person who thinks our withdrawal rate from Vietnam is too slow, who doubts the policy of Vietnamization, or considers the chances of a lasting peace in Southeast Asia to be so remote that it is not worth a single additional American life.

For example, I believe the Congressman who represents this district is totally sincere in his opposition to the war in Vietnam. But when anyone reaches the point where he accuses his own country of engaging in a policy of genocide and indiscriminate bombing of civilians in Laos, when he says this nation is guilty of war crimes like those for which the Nuremberg trials decreed the penalty of death, then I must protest. That is a disservice to our nation and the 2½ million young men who served in Southeast Asia—and to the 50,000 men who have given their lives there.

Having fought for this country with distinction does not convey to any man the right to libel its image with half truths and distortion. Every American, including those of us who cannot claim the distinction of having served in combat, has the right to criticize or disagree with national policy, but each of us also has the obligation to be responsible. It is here that I must take issue with my colleague, the Representative in Congress from this district.

I do so more in sorrow than in anger. At one time I had high hopes for my articulate, bright and attractive colleague. But as a legislator his base of support has shrunk to only the radical fringe of New Leftists in the House. As a candidate he is supported only by Norton Simon at the bank and the Lowensteins and Teddy Kennedy in their move to "dump Nixon". A brilliant future hay have been sacrificed at the altar of publicity.

Let me detail my charge and present my supporting case:

Congressman McCloskey held a news conference on April 17 after a trip to Laos. There he charged that his "suspicion that this country is deliberately following the practice of destroying villages in Northern Laos is borne out by the evidence."

At the same press conference he is reported to have said, "Since President Nixon came to office in 1969, American bombers systematically wiped out nearly all of the 3,500 villages in Northern Laos in an operation called 'Barrel Roll' leaving a fourth of the country's population homeless."

On other occasions I've heard statements about U.S. war crimes, genocide, and indiscriminate bombing of civilians attributed to him.

These allegations simply are not true!

Before leaving for Laos my colleague was briefed by Mr. Fred Branfman, Executive Director of Project Air War. Mr. Branfman served in Laos with the International Volun-

tary Service and resigned in late 1969 to spend some time in Paris where he was actively involved with pro-leftist Laotian students.

In early 1970 he returned to Laos and wrote numerous articles critical of United States policy. He played an active role as a legman and interpreter for visiting delegations of American anti-war and New Left personalities, including some who were traveling through Vientiane enroute to or from Hanoi.

He took an active part in helping visiting reporters who were looking for anti-U.S. Government stories. One of his favorite exhibits was a 10-year-old boy, Ba Som Di, of Ban Theim village who allegedly had been burned by a phosphorous bomb. He was a frequent visitor to both the North Vietnamese and Soviet Embassies and had a wide range of known contacts with the Pathet Lao, Soviet, and North Vietnamese officials.

Mr. Branfman was on close friendly terms with persons involved in an abortive coup to bring General Kong Le Bak to power with the assistance of the Lao Communist Party (the Pathet Lao).

Finally, with no specific charge publicly lodged against him, Branfman was deported by the Royal Lao Government.

When he returned to the United States, Branfman testified at the "unofficial hearings on 'U.S. war crimes'" chaired by Representative Ronald V. Dellums. He was scheduled to be a witness at the "war crimes" trial in Oslo, Norway.

Was it Branfman who suggested to Mr. McCloskey that he should visit a certain refugee camp and see a 10-year-old boy, Ba Som Di? When my colleague showed the picture of this unfortunate boy to Senator Kennedy as an example of indiscriminate use of phosphorous anti-personnel bombs by the United States, did he know that phosphorous for purposes other than marking targets and creating smoke to rescue downed pilots is not used in Laos?

Let's look at some of the other preparations made for Congressman McCloskey's trip to Southeast Asia. He was briefed by State Department officials before his departure and was told (*please note this*) that a USIS study had been done of *one* camp which housed refugees from 200 villages in the Plain de Jars area.

The significant point is that Mr. McCloskey was told of the report before he left. When informed of its existence, he requested copies and was told that the survey could not be furnished him, but a five-page summary could be made available which had already been given to Senator Kennedy. The summary was delivered before his departure. Please note again, *he asked for the survey, knew of its existence,* and *received the summary before he departed.*

Now remember this fact in context with his reply to William Buckley on television when Mr. Buckley said, and I quote, "The survey was in your briefcase, Mr. McCloskey. It was given to you a week before . . ."

After an interchange, Mr. McCloskey said, ". . . I am telling you you are not telling me the truth."

Now, if you want to play with semantics, the "survey" was not in the briefcase, but a "summary" was. Does that prove that William Buckley was a liar? I don't think it does any more than Mr. McCloskey proved that Father Matthew Menger, a Catholic priest who served the Congressman as an interpreter, had misrepresented the truth to him.

Despite Mr. McCloskey's allegations that significant portions of the "survey" were removed from the "summary", I categorically state that the summary was a true reflection of the survey. I say this because I have read both. Any intelligent reader will gather the same conclusions from the short version as he does from the longer one.

Let's backtrack. The State Department did inform Mr. McCloskey of the survey and the summary and he requested copies of both. The summary was furnished. But before the Kennedy Subcommittee he testified as follows, and I quote: "My staff was given a three-page summary that was supposed to be reflected in the document. I didn't see this three-page summary which was placed in a briefing book for me until the morning of 14 April."

Later in the same testimony and still referring to the summary, Mr. McCloskey said, and I quote: "This was the document I found in my own file on the morning of the 14th. *This is the reason I went to the Political Officer and said, 'May I see the survey?'*" (Page 135, transcript of Senate hearings, April 21, 1971)

At page 141 of the same hearings, Mr. McCloskey testified: "It was in reading it [the refugee book] over at 6:00 that morning in the Ambassador's house that I came across the reference to this survey *for the first time.*"

Apparently Mr. McCloskey wants us to believe that he did not know of the survey until he found it in his briefcase on the morning of the 14th. How does this square with his request to the State Department before he left Washington for copies of both the survey and the summary?

My colleague would have us believe that Ambassador Godley and Mr. Stearns of our Embassy lied when they allegedly said on the night of April 13 that, and I quote: "No survey of refugee attitudes had been made because of lack of staff." (Congressional Record, June 14, 1971, page 19564)

I find it incomprehensible that these State Department officials would attempt to state there had been no survey made when they had full knowledge that Mr. McCloskey had received the summary of the full survey. On April 9 a wire containing the full text of the summary was sent to the Embassy in Vientiane. The Deputy Chief of Mission, Mr. Stearns, in testimony before the Kennedy Committee, acknowledged that it had been received and that a decision had been reached in advance to supply the full text of the survey if requested. Now, I won't make any accusations about who wasn't telling the truth, but I ask any one of you, would you tell a man a survey had not been conducted if you knew a summary of the same survey had already been given to him?

This document caper is a classic example of Neo-McCarthyism—discredit, impugn, subvert, contravene, and rebut your opponent by attacking his credibility. Cover up your own bad case by attacking the integrity of those who defend against it. It is a sly technique, but is it the stuff of which Presidents are made?

No American official, including Ambassador Sullivan who served in Laos during the period currently in controversy, has ever denied the fact that villages have been destroyed in Laos. But the question is, were they destroyed, as Mr. McCloskey alleges, by a deliberate policy of striking innocent villages which were not in themselves military targets?

Mr. McCloskey's total evidence is what he was told by left-wing anti-U.S. groups before he left the United States, the testimony of 16 individual refugees from seven villages, and the USIS report on refugees.

Now, let's analyze his arguments:

He says there are 3,500 villages in the contested area. Based upon the USIS study of one refugee camp comprising residents of 200 of these villages and his interviews with 16 Laotians from seven villages, he concludes that 76 percent of these 3,500 villages have been wantonly destroyed by United States pilots. If this is not true, he says, "Show me pictures which prove the villages are still standing." This is the old "Have you stopped beating your wife?" type of argument.

This is argument by extrapolation from a non-representative sample. Let us play at this same game by taking the same sample and extrapolating in another manner:

About 150,000 individuals were pushed into refugee status during the period from the 1968 dry season through 1970 by North Vietnamese aggression. Only 17,000 came out out of the area where there was any U.S. bombing in support of the ground fighting. All of these were in camps like the only one Mr. McCloskey visited. But 48 percent of those interviewed, according to the USIS survey, indicated they left because of the *fear* of bombing. Thus, giving full credit to the USIS survey upon which the gentleman relies so heavily, we have 8,160 refugees who fled because they *feared* bombing. This is about 5½ percent of the refugees from 3,500 villages, 76 percent of which Mr. Closkey concludes were destroyed by bombing. And remember, all of this 5½ percent say they became refugees for *fear* of bombing and not actual bombing.

The Plain de Jars is one of the most fought over-pieces of real estate in the world. The North Vietnamese and the Royal Lao forces have taken and retaken it at least annually for many years. Ground fighting has been intense with much artillery and mortar fire.

Villages in much of the Plain de Jars and surrounding area are abandoned every five to seven years as the land is returned to fallow and inhabitants move to new areas to pursue the slash-and-burn method of growing rice. Other villages are burned by invading ground forces and some by bombardment in support of ground fighting in villages the inhabitants have already left. Arms caches and supply dumps in and around abandoned villages are often attacked and thousands of secondary explosions from such attacks prove the military nature of the targets. A photograph of a bomb crater in an abandoned village may satisfy some who wish to discredit the image of their own country, but it won't show whether people were there when the attack took place and whether the target was strictly military at the time.

Here is United States policy with respect to bombing: One standing hut is considered as an inhabited area and no bombs can be dropped within 500 meters of it.

During the period of time in question, Mr. Edward Archer, an outstanding Foreign Service Officer, investigated all bombing targets for U.S. forces in North Laos and made recommendations to the Ambassador. He never recommended approval of a strike against an inhabited village and no attack could be made without such approval. The attacking pilot was required to receive clearance from an airborne command controller who directed him to a forward air controller, who in turn directed the pilot to the target. After the strike, the pilot was required to report bomb damage assessment and the forward air controller was also required to report, as was the airborne command controller. Mr. Archer received the BDA (bomb damage assessment) and kept a record of all strikes.

Computer runs on all of this data have clearly shown that our policy has been rigidly followed.

The final question is, are all our American officials lying? Is Ed Archer lying? Is Father Menger lying? Are the pilots lying? Are the airborne command controllers lying? Are the forward air controllers lying? Is the tortured logic and the implication of one candidate for President the whole truth?

I leave you and the American people to answer this question.

My remarks today should not be interpreted as a personal attack. Rather they are a defense of this nation against an unfounded charge.

In summary let me say:

We know the New Left prospers when it destroys Americans' faith in their leaders.

Immunity from criticism is not the right of any public official, but it is the obligation of those who criticize to be fair, factual, and truthful.

Neo-McCarthyism, now McCloskeyism, has served the cause of the New Left.

EXHIBIT B

[From the San Francisco Chronicle, Dec. 2, 1969]

ANOTHER VIET VILLAGE DIES

(By Helen Emmerich)

I returned from South Vietnam last Friday, midst the furor here over the Song My incident. It came as a complete surprise to me, the massacre of those villagers, for the impact had not yet hit the 1:15 Saigon press briefings.

Perhaps I haven't been out of Vietnam long enough for the horror of the massacre to hit me. Perhaps it never will, or I have witnessed many Son My's, smaller in scale but nonetheless as devastating.

A first operation must be like a first love affair. You never forget the first sight of innocent Vietnamese falling, under the fire of U.S. artillery. Perhaps the only thing that keeps one sane when it is happening is the matter of fact, just another day's work manner in which it is conducted.

Operation Arizona was my first search and destroy mission. It happened in I Corps, 20 miles south of Da Nang, with the 5th Marine Division.

We took the ridge without incident. It had been just another long hot walk in the sun. We had met no enemy, nor had we heard a single shot since climbing down from the amphibious tanks after crossing the river at dawn.

Now we waited. Two companies, half a battalion of Marines taking part in Operation Arizona in Quang Nam Province.

Sitting on the naked ridge was like being in a great natural amphitheater. Stretched below us were rice paddies. Across the shallow valley floor was the small village.

With the naked eye, the peasants could be seen bent to the earth, tilling the soil. With field glasses, the Vietnamese could be watched in the tiny market place, haunched beside their wares, walking around.

PEACEFUL

We were waiting to hear from the other two companies closing in on the other side of the village. It seemed so peaceful there in the fading afternoon. I wondered why more than 500 men were needed to home in on such a small place.

At dusk the helicopters came, scurrying over the village, dropping thousands of leaflets on the hootches, into the rice paddies below.

Colonel William Kitterman said they were warning leaflets, urging villagers to move out before dark. The helicopters made three passes. The breeze picked up hundreds of leaflets and sent them across the paddies to where we waited.

No one came out. I watched and waited with the Marines. I stared at the village. Lord, I thought, why don't they walk out of there.

CHANCE

Kitterman put down the glasses and looked at me. "Well, they had their chance. Now, we just assume they're VC."

All of them? The old man whose back was bent to the earth, the children seen running in the market place?

"Yes, all of them."

Don't you imagine that even the Viet Cong would want to get out if they thought they were going to be killed?

"You don't understand these people. Their land is more important to them than their lives. They probably think we'll just pass them by."

I picked up the colonel's glasses to take another look. I saw shadows pass small fires. Otherwise, the village was motionless, silent.

FLARES

The C-47 Dragon ships came, dropping flares in a bright ring around the village. Nothing moved. Nothing could be seen. The villagers had moved inside under the elephant grass overhangs.

I asked the colonel what happened next.

"We're going to prep the village."

The goosebumps rose on my arms, sticky with sweat in the hot night. My God, you cannot. Why don't we send men in to get those people out?

"They had their chance."

Shortly after 10 p.m. the first artillery rounds whistled overhead and crashed into the village. First the rounds, then the silence, then the screams.

SOUNDS

I climbed on top the Amtrak. I buried my head in my arms, trying to blot out the devastating sounds. I kept asking myself why they hadn't come out. I was crying. I was angry.

Damn them, I thought. Those fools, let them die.

When the artillery stopped, the gun ships came. C-47's armed with gatling guns, grunting out 2000 rounds a minute. Spraying 60 millimeter shells up and down the valley floor, like dots and dashes of fire from sky to earth.

If anyone had a change of heart, it was too late now. I waited out the night on the Amtrak. The cries never stopped.

At daybreak we moved in to "marry" the other companies already in the village.

Kitterman said, "They took the village without incident." I looked at him to see if he was serious. He was.

BURN

Grey whisps of smoke curled above the hootches. Kitterman had given the order to burn the homes, round up the detainees, fill in the wells, destroy the rice caches.

"We can't leave anything for the enemy."

We entered the village jammed with Marines. Hootches were crackling, the stench was sickening. Burnt hootches, burnt flesh, small man-made craters already beginning to fill with water.

Five bodies sprawled in the market place. Eyes stared out from gaping sockets. The sun ricocheted off staring eyeballs. Black blood congealed on broken limbs. Two shriveled old men, two withered old women. A girl about 12 years old.

EYES

Whimpering came from under banana trees 15 feet away. Eleven villagers lay on the earth. A young woman moaned, one arm grotesquely thrown behind her, the other holding a nursing baby to a sagging breast.

A Marine medic was splinting a little girl's legs, both broken. Another pushed a hypodermic needle into an ancient arm. They were all wounded, severely. It isn't their wounds that I remember so much. It's their eyes. Fear wear's a haunting, awesome face.

I marveled that they could be afraid of me, of other Americans. It was clear they were, desperately so.

The helicopters came and I rode out with a half dozen of the possibly 20 detainees. Three children and a woman on our ship. The kids had a hammer lock on my legs. They hurt for a long time after.

The colonel said we'd leave the dead for their own burying. By whom I wasn't sure, since everyone was going to a detainee camp for interrogation.

QUESTION

When I returned to the Marine press camp at Da Nang I couldn't get the village out of my mind. I finally asked a gunnery sergeant why the villagers hadn't come out after the leaflets were dropped.

He took a hard drag on his coffee, looked around, then whispered to me, "Look, don't say I told you this—but don't you know—they couldn't read the leaflets."

Eighty-five per cent of the people in Vietnam can't read.

When I returned from South Vietnam for the first time in 1967, I talked to several California lawmakers about the search and destroy missions and other horrors. One was Charles S. Gubser (Rep. Gilroy). He had asked me to report to him on my return.

I saw Gubser in Washington. As vice chairman of the Armed Services Committee, I was sure he would be especially interested in Operation Arizona and other similar operations. Gubser told me there was nothing that a congressman could do, "our powers have been usurped by the Executive branch."

EXHIBIT B1

[From the Sunnyvale-Standard Register-Leader]

"She received a signal honor from Congressman Charles S. Gubser when he appointed her a representative of the 10th Congressional District to conduct a fact-finding mission in Vietnam. (See letter below.)"

Mrs. Emmerich, a Standard Register reporter for the past four years left ten days ago on a two-month tour of the war zone for this paper. Now she will have additional duties in reporting to Congressman Gubser, a member of the House Committee on Armed Forces.

(Congressional letterhead, May 10, 1967):

"MRS. HELEN EMMERICH,

"Care of Sunnyvale Standard.

"DEAR HELEN: I am writing this letter to you in care of the Sunnyvale Standard, knowing that it will be delivered to your doorstep in Saigon a few days after it is printed in the Sunnyvale Standard.

"By this time you have probably received my cablegram appointing you as the representative of the 10th Congressional District to conduct a fact-finding mission in Vietnam. I am looking forward to reading your reports and know they will be helpful to me as a member of the House Committee on Armed Services.

"I don't know whether you realize it or not but you are the first reporter from Santa Clara County who will cover the war in Vietnam. Thus you have two firsts to your credit—one of the first women reporters and secondly the first from my district.

"Hoping your tour is interesting and fruitful, I am,

"Yours sincerely,

"CHARLES S. GUBSER."

EXHIBIT C

[From the Christian Science Monitor, Mar. 14, 1970]

WHAT U.S. BOMBING FEELS LIKE TO LAOTIANS

(By Daniel Southerland)

BAM NOM XAY, LAOS.—The old woman said she had been through several wars but that this was the most destructive and terrifying—because of the bombing.

"In other wars, I didn't have to leave my home," she said.

"When the soldiers came on the ground to fight, I wasn't so afraid," she said. "But when they came in airplanes, it was terrible."

The 70-year-old Lao woman was one of some 14,000 refugees evacuated from the Plain of Jars prior to the Feb. 21 recovery of that area by North Vietnamese forces and the Lao rebels, the Pathet Lao.

Few civilian inhabitants, if any, were left in the Plain of Jars following the evacuation of the refugees.

In 1960, the plateau itself and its surrounding ridges and valleys had supported an estimated 150,000 people. But a decade of war has taken its toll.

The old woman and some 750 other persons from her native village were moved by plane and then by truck last month to this refugee camp with its bamboo-and-straw huts, about 40 miles east of Vientiane.

AIR POWER REDIRECTED

The correspondent visited four refugee camps and talked with refugees from six different locations in and around the Plain of Jars.

After questioning a large number of them, it was possible to get a picture of the de-

vastation unleashed by American fighter bombers in northeastern Laos over the past two years, and it is not a pretty one.

After the United States halted its bombing of North Vietnam on Nov. 1, 1968, it stepped up as much as 10-fold its bombing raids—support which started on a minor scale in mid-1964—against Pathet Lao-occupied northeastern Laos. The number of bombing sorties by United States Air Force and Navy jets rose to as many as 300 a day.

This bombing campaign, code-named Barrel Roll, is separate from the other, more-publicized campaign. The latter, code-named Steel Tiger, is directed against the Ho Chi Minh Trail in southern Laos.

The refugees said about 9 out of 10 of the bombing strikes flown over the past two years in the Plain of Jars area were carried out by American jets and the rest by propeller-driven Royal Lao Air Force T-28's.

In most areas of the plain, the bombings forced the people to move out of their homes and into trenches, caves, and bunkers where they lived for the most part of two years.

HIDDEN BY DAY

They threw corrugated iron over the trenches and covered with dirt, topped with branches for camouflage. Many said they ventured out to farm only at night because of the bombing.

By all accounts, the situation has been somewhat similar for the estimated 192,000 people living in Houa Han, or Sam Neua Province to the northeast of the Plain of Jars, although information is more difficult to come by on that area.

One Western diplomat reported, however, that in some areas of that province "whole communities are living underground."

It has been a similar story also for villagers living in the vicinity of the Ho Chi Minh Trail in southeastern Laos, where refugees and North Vietnamese prisoners and defectors say many villages have been destroyed.

In all of these places, the bombing stepped up greatly after the cessation of the attacks against North Vietnam.

In the Plain of Jars area, the bombing destroyed the main towns of Xien Khouang, Khang Khay, and Pmongsavan. The refugees said the bombs flattened many villages in and around the plain and heavily damaged others. They said no villages they knew of escaped the bombing.

The refugees said they were sometimes forced to leave their villages and bunkers to do porterage—carrying rice and ammunition—for the Pathet Lao and North Vietnamese. But they added that in many bombing raids there were no Pathet Lao or North Vietnamese troops near their villages.

RAIDS DAILY OR OFTENER

As the bombing increased, they said, the troops moved further away from the populated areas.

In 1969, they said they saw the bombers every day when the weather was clear, sometimes so often they could not count the number of raids. The planes tended to fire at anthing that moved, they said.

For the most part, however, the attackers spared their buffaloes and cows, although some refugees felt that even these were sometimes targets.

One man said he narrowly escaped being blasted to pieces on six separate occasions when bombs fell near his hole, several times knocking him unconscious. But while he escaped death, there was one thing he could not escape—fear. It stalked him day in and day out.

CIVILIAN TERRORS DESCRIBED

Some refugees said they moved four or five times, each time farther away from their villages, to escape the bombing. But the bombs always followed them. Even at night the bombers came, and finally, even the rice fields were bombed.

"There wasn't a night when we went to sleep that we thought we'd live to see the morning," said one refugee. "And there wasn't a morning when we got up and thought we'd live to see the night."

"It was terrible living in those holes in the ground," said another. "We never saw the sun. Our hair was falling out."

"My wife and three children were killed," said a man in his thirties. "There were no troops (Pathet Lao or North Vietnamese) anywhere near our village."

All this raises some basic questions about the bombings in northeastern Laos. What has been its purpose?

It is impossible to get the United States Government side of the picture in any detail because American officials refuse to discuss except in the vaguest generalities the activity in Laos.

PILOTS PLEDGED TO SECRECY

The pilots who fly the raids from air bases in Thailand and South Vietnam and from carriers in the Gulf of Tonkin are under instructions not to discuss the details of their missions.

For years, the United States maintained the fiction that it was only flying "armed reconnaissance" missions over northern Laos.

The most candid official acknowledgement that something other than "reconnaissance" was going on came in President Nixon's March 6 statement when he said for the first time that the United States had been flying "combat support missions" in northern Laos when requested to do so by the Royal Lao Government.

"The level of our air operations has increased only as the number of North Vietnamese in Laos and the level of their aggression has been increased," the President said.

BUILDUP ADMITTED

On this point, there is no question that there has been a continuing North Vietnamese burden in northeastern Laos. This buildup has been in direct violation of the 1962 Geneva accords and has allowed the Pathet Lao, heavily supported by the North Vietnamese, to solidify their control there.

But has bombing been a justifiable or effective response? A number of well-qualified military sources feel the bombing's effectiveness in cutting enemy supply lines and slowing down the North Vietnamese has been in general greatly exaggerated, just as it so often had been in both North and South Vietnam.

BOOMERANG EFFECT?

According to the refugees from the Plain of Jars, the bombing may even have had a boomerang effect in some areas.

One refugee said that as the bombing increased, the Pathet Lao forces in his district started getting more volunteers, whose attitude was "better to die a soldier than to stay at home waiting for the airplanes to kill you."

He also said the bombing tended to heighten the fighting spirit of the Pathet Lao—no mean achievement given the Lao propensity for avoiding battle.

Whatever the effects of the bombing on enemy military forces in Laos—still a subject for much debate—there is no doubt as to its effectiveness in completely disrupting civilian life.

TRANSPORTATION HALTED

Whereas the North Vietnamese and the Pathet Lao soldiers are capable of moving into the protection of the forests and living off supplies shipped in from neighboring North Vietnam, the civilians are tied to their rice fields, their livestock, and the rest of their belongings and are thus exposed more constantly to the bombings than the soldiers.

A refugee from Phongsavan said the bombing put a halt to all civilian motorized transportation in his district and caused markets to open only in the predawn darkness and to close before sunrise. Schools were destroyed, and there was a general shortage of everything from clothing to bicycle parts.

Sometimes it took some prodding and a lot of patience to get the refugees to talk about all of this, and it appeared to me, in fact, that some of them had been told not to talk about it.

Many of the wounded, the refugees said, had chosen to stay behind with the Pathet Lao and not to come south with them.

Although the bombs no longer are falling on these people, pieces of the war are still with them. They have taken the debris cast down by the warplanes and turned it into tools and implements.

How do they feel about the bombing now?

It is difficult to say. One refugee said the Pathet Lao had told them: "America is very far away, and the Americans have come to kill the people of Laos and colonize our country. You should be very angry with the Americans."

REFUGEES ARE FRIENDLY

But if you go into their crowded camps, the refugees will be friendly and fairly open after a while, providing there are no government officials or soldiers around. They are attractive and intelligent people, quick to laugh at a joke, naturally polite and hospitable, and they will share their fish, rice and tea with you.

But they have a list of grievances.

They complain that Central Intelligence Agency-supported army of Gen. Vang Pao conscripted many of their only remaining sons. There are few young and able men in these refugee camps, and many, of course are still with the Pathet Lao.

They complain that the stifling lowland climate is too hot for them, and that the farmland they are now clearing, given by the Laotian Government, is not as good as the land they left behind in the plateau.

And there is a problem of money.

The only currency many of the refugees had when they came out of the Plain of Jars was Pathet Lao money, and it is worthless now. On the back of the 500-kip notes they carry is a scene showing Pathet Lao anti-aircraft gunners shooting down American planes.

EXHIBIT D

[From The New Republic, May 9, 1970]

THE LONG MARCH—LAOTIAN TRAGEDY

(By Carl Strock)

VIENTIANE.—After twenty years of sporadic, semi-secret warfare, Laos has a serious refugee problem. At least half the population of three million has been displaced by the fighting, according to government officials in Vientiane. At least 180,000 are living in "refugee villages."

At the end of 1968, American bombers were diverted from North Vietnam to Laos and began systematically depopulating Pathet Lao-controlled territory. Air strikes were no longer limited to the network of North Vietnamese supply routes twisting through the sparsely inhabited mountains of eastern Laos on their way to South Vietnam (the "Ho Chi Minh trail"), nor confined to "combat support missions," as President Nixon would have it. Everything that stood and was not controlled by the government became a target. Tribesmen and peasants began to flee to the relative safety of the government controlled lowlands. The US Embassy, having persuaded itself that the people were escaping "Communist terrorism," was enthusiastic about this "voting-with-the-feet." Yet it was not—and is not yet—eager to advertise the refugee situation.

In mid-1969 air strikes were escalated to their present high level of 15,000 sorties a month. In support of the secrecy-shrouded offensive by the CIA-financed "Clandestine Army" of the Meo mercenaries, the US carried out a saturation bombing campaign on the Pathet Lao-controlled Plain of Jars in northeastern Laos. After seizing the Plain, the Clandestine Army rounded up the inhab-

itants, culled out the prosperous farmers and merchants—the main contributors to Pathet Lao tax coffers—and shipped them to the Vientiane lowlands. The poor peasants were allowed to remain behind, not in their original homes, which had been reduced to rubble by the bombing, but in the "refugee villages."

I asked a young man what happened when the Clandestine Army took over his village. "The soldiers gathered us together," he said. "They told us we had one hour to leave. We didn't know where we were going. The soldiers took whatever they wanted from our houses, and then they burned the village down. An officer told us that if anyone asked, we should say we were escaping from the Communists. We walked 20 miles to an airstrip, and then American planes brought us here. I was lucky. I'm half Chinese, so they didn't make me join the army. The Lao boys were drafted right there. I haven't seen them since."

When the dry season came at the end of last year, intelligence reports indicated that the North Vietnamese and the Pathet Lao were planning a counter-offensive to recapture the Plain of Jars. No one believed that the rag-tag Clandestine Army could hold off a determined Communist advance, but the U.S. Embassy here wanted two guarantees: that the peasant-refugees—indispensable producers of rice—would not again be able to benefit the Pathet Lao; and that American bombers would have a free hand to pound the oncoming troops. So it was decided to evacuate all civilians from the Plain of Jars.

Between February 5 and 11, some 15,000 bedraggled Laotian peasants were loaded onto Air America cargo planes and shipped to new "refugee villages" in the Mekong lowlands. The Plain of Jars became a free-strike zone. The U.S.-Vientiane planners, unable to carry their government to the people, had chosen the Vietnam-tried course of bringing the people to the government. "We could work in the fields only at night; by day we slept underground in the bunkers," explained one old woman in a camp near Vientiane. "Everything that moved was bombed. Our village was bombed three times. The second time my daughter was killed. Then we left and went to live in the forest. It's very difficult to live there. There's not enough to eat."

Though more people live under government control since the bombing, American officials here deny that was the intent of the bombing. They claim that "Communist terrorism" is responsible for the influx of refugees. When the mass evacuation from the Plain of Jars was begun in February, U.S. AID officials who supervised the operation maintained that the people all freely chose to leave their homes. Other U.S. AID officials, who do not wish to be identified, now admit, however, that the decision was made in Vientiane and that the people were moved regardless of their wishes. Naturally, when confronted with the choice of being bombed at home or surviving in a far-away camp, many people chose the latter. But it seems devious to call that choice "free."

The plight of refugees here is not yet as grim as that of their counterparts in Vietnam. Camps are small and usually contiguous to an established village. The idea is that the old villagers will help dispossessed newcomers; so far it has worked well, to the great credit of the Lao villagers. But refugees do not have enough land to support themselves and the land they do receive is usually the least fertile. The thatched, barrack housing is depressing even to peasants accustomed to primitive conditions. Medical care is rare; so is schooling. US AID this year will spend some $7 million on refugee relief (about one thirty-fifth of the estimated $250 million spent to wage the war); most of that will be used for rice crops.

The worst suffering is not in the camps. By the time people reach them, the worst is over. Their villages have been destroyed; their relatives killed or drafted; they have walked, sometimes for months, through some of the most rugged country in the world. Only the lucky ones ride Air America. The others, by the tens of thousands, put their belongings on their backs and set out across the hills on foot. It is an agony difficult for an outsider to imagine. American and Laotian officials estimate that over the last 10 years 20 percent of the people of northeastern Laos have died in these refugee marches. The verdant limestone mountains that seem to have been lifted from a delicate Chinese scroll are a cemetery for 100,000 peasants! Random air strikes are always a threat; countless unexploded bombs lie scattered half-buried in the hills; exhaustion claims the weaker marchers; epidemics, expecially of measles, are common; and of course there is never enough food.

The US Embassy downplays the dimension of the tragedy by counting only those currently living on relief in recognized "refugee villages"—the 180,000 I have mentioned. The Laotian government, however, reports 543,000 refugees and says there are at least another 150,000 unregistered. Now—because of heavy fighting and bombing near the Plain of Jars—another 100,000 are trudging southward through the roadless mountains to safety. One out of five will probably die before reaching the lowlands.

EXHIBIT E

[From Life magazine, Apr. 3, 1970]

THE PENDULUM OF WAR SWINGS WIDER IN LAOS

(By Hugh D. S. Greenway)

VIENTIANE.—Sam Thong has fallen. The North Vietnamese are in the town. The American bungalows around the airstrip, until just a few days ago the headquarters for U.S. aid and refugee relief, are now only burned-out ruins. Long Cheng, which holds the secret CIA base, the headquarters of General Vang Pao's clandestine army and the center for the entire American-Laotian effort in northern Laos, may soon be next.

The Americans at Sam Thong have been evacuated to the south. Thousands of civilians—Meo tribesmen, wearing elaborate wrought-silver necklaces and carrying their handmade flintlock muskets—are trudging south with all their belongings on their backs. The silver airplanes of Air America, the CIA contract airline, are flying in low over the jungle-covered hills and limestone outcroppings, so ironically reminiscent of placid classical Chinese landscape paintings, to drop 100-pound bags of rice to feed the fleeing Meos.

The annual North Vietnamese dry-season offensive is in its seventh week and already the troops from the northeast have penetrated deeper than in previous years, bloodying the nose of the dispirited Laotian army and dealing the government's morale and prestige a heavy blow.

For years the Laotian war ran on in the wings of the larger Vietnam theater, with neither side pushing the other too hard, in the last two years the pendulum of war in Laos has been swinging harder and wider, and each wet-season dry-season offensive has mounted a little higher than before. There are two months of dry season left. The fear now in both Washington and Vientiane is that, this time, the North Vietnamese might be tempted to push on into the Mekong River valley—which would upset the balance of power in Indochina. If they did, it might put the Nixon Doctrine of limited involvement in Asia to its severest test.

There are several reasons why the U.S. presence has been kept secret. Like the North Vietnamese presence, it is a violation of the Geneva accords. And, U.S. officials argue privately, a clandestine operation doesn't risk prestige in case of setbacks, and is thus less likely to commit the U.S. to Vietnam-scale involvement. Aside from the fact that most Americans find the idea of a secret war abhorrent, the lack of reliable information has led to gross exaggeration of the U.S. role in Laos. President Nixon's recent speech was meant to take the wind out of some of the exaggerations, but unfortunately the President was less than totally candid. While he admitted the bombing of Laos, he did *not* mention the CIA operation or the full role of the American advisers in the Laotian war. The President's estimate of North Vietnamese troop strength in Laos was at least 17,000 higher than the highest reliable estimate in Vientiane including the estimates of the Americans themselves. His denial that there have been any American combat deaths in Laos was quickly proven false as well.

Laos is an improbable place for the U.S.—or anybody, for that matter—to become involved. Except for a brief moment of glory in the 14th Century, when Lan Xang (the Kingdom of the Million Elephants) held sway over what is now Laos as well as parts of Thailand and Cambodia, Laos has been a prisoner of geography, fought over and plundered repeatedly by its more powerful neighbors. The country as now constituted dates only from 1946 when the French assembled three kingdoms under their control and called it the Kingdom of Laos. Today there are fewer than three million people in the entire country, two million of them in government-controlled areas near the Mekong.

Perhaps losing so often and being subjugated by so many masters does something to a race for the Lao answer has been to drop out. They are among the most charming people in Asia—and the most other-worldly and least martial as well. Consequently, Lao troops have sometimes fired over the heads of the enemy rather than hurt anybody, much to the despair of American advisers. Most of the effective fighting on the government side is done by General Vang Pao's warlike Meo tribesmen who live in the hills of northeastern Laos.

The bitterness that divides Laotians is not so deep as the bitterness that divides the Vietnamese. The two opposing leaders in Laos, Prime Minister Prince Souvanna Phouma and Pathet Lao Leader Prince Souphanouvong, are half-brothers. In Saigon, a mere whisper in favor of coalition government will land you in jail. The Vientiane government, however, has always advocated a return to the tripartite coalition of 1962, and the cabinet posts which the Communist Pathet Lao abandoned then are still being kept open for them should they return. Both sides advocate coalition.

The pipe-smoking, French-educated Souvanna Phouma, who seems more a French bourgeois than a prince, is the indispensable man in Laotian politics because he is the only figure who could be acceptable to both sides. His acceptability to the Communists lessens as the war in Laos heats up.

The present escalation began in November 1968, when the Americans decided to increase the bombing of Laos three-, four- and then five-fold. The decision was not made in response to increased North Vietnamese aggression in Laos, as President Nixon indicated in his speech. The U.S. military did not think it could afford to give up bombing North Vietnam unless it increased the bombing of Laos. At first air escalation was restricted to the Ho Chi Minh Trail network, but soon it spread to include close American air support of Laotian ground troops in western Laos as well.

When the North Vietnamese continued their offensive into the rainy season and took the strategic government garrison at Muong Soui in June of last year, the Royal Laotian army's morale ebbed. Perhaps to restore their confidence, the U.S. last summer encouraged, helped plan and supported General Vang Pao's brilliant capture of the Plain of Jars (so called because it is dotted by hundreds of man-size cinerary urns). Militarily,

the maneuver was a huge success. Lightning helicopter assaults, flown by American pilots, put Vang Poa's Meo deep into enemy territory to the east of the Plain of Jars, severing North Vietnamese supply lines. The plain fell with very little resistance, and the retreating North Vietnamese and Pathet Lao abandoned huge stores of food and ammunition.

But this was in effect another escalation of the conflict, because for prestige and political reasons the North Vietnamese would inevitably move to retake the plain this dry season, to revenge last year's humiliation. Then, although they are unlikely to attempt to occupy all Laos, their continuing military pressure might force Souvanna Phouma to ask the U.S. to halt bombing. Under the circumstances it is difficult to understand why the U.S. is not doing its best to cool down the war, by discouraging such provocative government adventures as well as by limiting air activity, since both could be done without endangering either Souvanna Phouma's government or American troops in Vietnam. A Pathet Lao representative arrived in Vientiane from Hanoi recently, carrying peace proposals from Prince Souphanouvong to his half-brother Souvanna Phouma. The letters follow a five-point Pathet Lao peace proposal which is obviously timed to coincide with the present offensive. The proposal calls for a cease-fire and a provisional coalition government to be followed by elections and a withdrawal of foreign forces. Such terms might be unacceptable in Saigon, but they are not entirely so in Vientiane. Souvanna Phouma knows that the North Vietnamese will not give up the Ho Chi Minh Trail while the war in Vietnam continues. He has said he does not consider that wild, uninhabited region vital to Laotian sovereignty. He would gladly give the North Vietnamese a free hand there in return for peace in western Laos.

But Hanoi has made it clear it will not negotiate until there is a bombing halt. And this is one thing the Americans most surely will not concede.

As the war goes on, so does the misery inflicted on the Laotian people. Refugees from the Pathet Lao zone all tell harrowing tales of entire villages living in caves and holes in the ground, farming their rice by night in order to escape the bombing. From all reports the wholesale bombing of civilian centers in the Pathet Laos areas goes beyond anything the North Vietnamese have experienced. When Pathet Lao or the North Vietnamese troops were in the area, even young children were forced to carry rice and arms for days on end. As for the Meo in the mountains to the north, sons will shoot their parents rather than let them fall into North Vietnamese hands.

For Vang Pao, the guerrilla leaders of the Meo—the most effective fighting force the government has—the situation has become desperate. In the last six months he has lost more men than in any comparable period in the last 10 years. His people have become discouraged, and only Vang Pao's leadership keeps them going. There are no longer enough young men left for the Meo girls to marry, and some of Vang Pao's troops are mere 12- or 13-year-old children.

At least one American in Laos—the near-legendary Edgar "Pop" Buell—is darkly pessimistic about the outcome. A retired Indiana farmer, he heads the U.S. agency for International Development efforts in northern Laos, and has been a kind of Lord Jim to the tribes there. But just before he was evacuated from Sam Thong, "Pop" Buell, his clothes rumpled, and his eyes red from lack of sleep, wondered aloud how much longer Vang Pao and his Meo could keep up the fight. Maybe a couple of years more, he thought, but eventually the Meo, would just have to make some, accommodations with the North Vietnamese. This is Buell's 10th year with the Meo, and he put his leathery face in his hands and said: "It's all been running and dying, just running and dying."

EXHIBIT F

STATEMENT OF RONALD J. RICKENBACH

The following is a description of the four bombing incidents that I was involved within the follow-up stage while I was working with AID in Laos from 1965 until 1968.

The first was in October, 1966. I was stationed in the town of Thakhek in the central part of the country. Reliable reports filtered down to the AID office, as well as to the Royal Lao Government Offices (RLG), that a village up in the northwestern section of Khammouane Province had been bombed by jet-type aircraft. Due to the lack of established lines of communication into this area verification was very difficult.

I proceeded to contact the AIRA Attaché (U.S.A.F.) located in Savannakhet Province to the south of us, as I was informed that this area in question was under his jurisdictional authority. After explaining the situation to him there was a delay of about a week before he got back to me with the message that he was going to arrange for two helicopters from the U.S. Army base from Nakorn Phanom in Thailand to supply transportation into the stricken area. Upon arriving at the site we saw that there were two villages, very small with only about 12 families in each one, located along a stream, and about 500 yards apart. The site was only about 5 air miles from the North Vietnamese border with Laos. Six huge craters surrounded the villages in halo-like fashion. Miraculously, the villages stood fairly much intact. Upon landing and talking with the people in the villages the following story was related to us. They had many times seen jets flying overhead going to and from the general direction of North Viet Nam and Thailand.

On this particular day of the bombing, however, the jets, three of them, swept in and made bombing and strafing runs on their village. Luckily most of the people were able to take cover. The bombs that were dropped landed harmlessly in the surrounding jungle. By the time the strafing started the villagers had taken cover. The only casualties were people that were hit by flying debris. One man had a severe leg wound caused from a piece of wood that had split off one of the beams from his house from impacting machine-gun fire. One old woman, the people related, died of fright. There were a number of other minor casualties, and a few water buffalo that were killed by the bombs. While in the village we proceeded to care for the sick and wounded, and gave a standard refugee commodity distribution.

In addition, the AIRA Attaché made a cash payment for the buffalo and material damage caused by the strike. The last thing we did before leaving the villages was to encourage the villagers to use the shovels and picks that we had given them to quickly fill in the craters caused by the bombs. The Attaché cautioned them that mistakes like this were very rare, but once it happened the first time the odds against it happening again were drastically shortened due to the fact that the existing craters marked "fair game" for other pilots looking for targets of opportunity.

The second incident where a village was hit was in the same immediate area. By contrast however, it was a fairly large village, with over 1,000 people. The exact dates have now become foggy, but I believe it was in May of 1967. Again, it was a jet raid. I was working out of Sam Thong at the time. Upon hearing of the incident, I immediately flew down to the site, the village of Ban Done. The area had been bombed and strafed. Napalm was used.

Seventy five percent of the village had been destroyed; some because of direct bomb hits, but the majority because of fire damage. By contrast here the villagers were very angry, unlike the first incident where they were more frightened than anything else. About 5 people were killed, and over 100 casualties had to be evacuated to hospitals in Thakhek, and another town, Paksane. In this village, as was the case with the first incident, there was no military markings that could have identified the area as anything but a civilian population center.

In November of 1966, while I was still working in Thakhek, a village approximately 10 miles south of the town, and along the Mekong River across from Thailand, was bombed by a solo jet. Two bombs were dropped. One landed and exploded in a rice paddy away from the village. The other landed right in the middle of the housing area. Fortunately, this one did not explode. We immediately had the village evacuated upon receiving word of the possibility from the AIRA Attache that it might have been a time-delay bomb. It turned out not to be. The Army from Nakorn Phanom sent a crew over to dig for the bomb, but after two weeks they gave up the search and wrote it off as a "dud."

The last incident involved the strafing by a U.S. jet of the bridge that connects Route 13 between Thakhek and Savannakhet Provinces. This took place in December of 1966. The area around the bridge was defended by Royal Lao Army Troops. The bridge was open to all commercial traffic, and indeed, many U.S. AID supplies were travelling from Vientiane to points south over the bridge at that time. The jet came in and fired on cars and pedestrians that were crossing the bridge.

After a number of passes, it flew away, towards Thailand, as witnesses recalled later. Again, luckily there were no casualties, just a lot of frightened people who were beginning to wonder on whose side the U.S. was on.

EXHIBIT G

DEPARTMENT OF DEFENSE,
June 11, 1971.

Hon. PAUL N. MCCLOSKEY, JR.,
House of Representatives,
Washington, D.C.

DEAR MR. MCCLOSKEY: Mr. Johnson has asked me to reply to your letter of 19 May 1971.

I have reflected on your various requests for photographs of villages in Laos. Your understandably humane interest in the effect of the war on the civilian population in Laos is shared by the many in the Defense Department who over the years have wrestled with this problem. I hope our basic agreement on motives is not obscured by the differences we may have over issues of management.

With regard to management, we have explained repeatedly that we have established restrictions up to the limits of the safety of our pilots in order to minimize the effects of the war on civilian populations. Ambassador Sullivan, along with knowledgeable and competent witnesses from State, AID, and Defense, has discussed the refugee situation thoroughly with cognizant bodies in the Congress. As you know, we are convinced that the overwhelming cause of refugees in Laos is the offensive military activity of the North Vietnamese Army. Finally, when civilians have been caught up unavoidably in the web of warfare, we have given strong support through AID to ameliorative programs.

It is neither feasible nor useful to go beyond these steps to furnish extended photography of Laos. Much of Laos is inhabited by itinerant groups who establish their villages temporarily and then move on. The abandoned villages, in various stages of decrepitude, dot the countryside. Those which have suffered military damage may be indistinguishable from those ravaged by the weather; those which have suffered identifiable military damage may have been struck by the enemy rather than by US bombs; finally, even if it appears from current photography that US bombs might have dam-

aged a village, we come back to our assertion that only valid military targets come under attack as an unavoidable consequence of enemy activity, an assertion which you implicitly are challenging.

In sum, I cannot see that the cause of the civilians in Laos will be advanced by our further exchange of photographs. The public record is as complete regarding our efforts to minimize the effect of the war on Laotian civilians as we can make it without disclosing information which the enemy would certainly use further to endanger the lives of our pilots. Let me assure you that we are resisting a ruthless and aggressive enemy as humanely as the circumstances permit.

Sincerely,

DENNIS J. DOOLIN,
Deputy Assistant Secretary.

Mr. GUBSER. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I will be glad to yield to the gentleman from California.

Mr. GUBSER. Mr. Speaker, the gentleman from California (Mr. McCLOSKEY) and I reached an agreement that he would proceed without interruption from me, and then proceed to yield to other Members on the floor. Since I have a special order of 1 hour, which will immediately follow that of the gentleman now in the well, the agreement was that I would in turn proceed uninterrupted.

In making this agreement it was understood that the gentleman from Ohio (Mr. DEVINE) had a third special order of an additional hour following mine, so that, if it was necessary, we could continue to discuss the matter into the time reserved by the gentleman from Ohio (Mr. DEVINE).

It is my understanding that the gentleman from Ohio (Mr. DEVINE) has been unavoidably detained in his State, and will not be here to claim his special order. I would therefore like to suggest to the gentleman from California (Mr. McCLOSKEY) that we make a change in plans, and that after he has yielded to other Members on the floor perhaps I could proceed on the remaining part of his time, and when that time has been consumed that I could then continue on my own time. Is that agreeable?

Mr. McCLOSKEY. It is certainly agreeable.

Mr. HOSMER. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Long Beach, Calif. (Mr. HOSMER).

Mr. HOSMER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the gentleman in the well has defined what war crimes are with respect to the Norwegian situation where the Nazis displaced the villagers and, unfortunately, destroyed villages.

However, I understand that the bombing of Berlin, Hamburg, and other German cities was not a war crime.

So then there is such a distinction?

Mr. McCLOSKEY. The gentleman is correct in that insofar as the destruction through aerial bombardment of the cities in Germany, Russia, and Great Britain these were eliminated from the discussion and the agreements regarding the Nuremberg tribunal. To my knowledge no war crimes were charged or prosecuted against any individual British, French, German or Russian with respect to the aerial bombardment of the cities of Europe.

When I identified the war crime destruction of villages in South Vietnam, I referred to the instances of destruction by infantry operations with air and artillery support.

Mr. HOSMER. Apparently, there are situations involved in the bombing of these areas that does not constitute a war crime; is that correct?

Mr. McCLOSKEY. I concede that the Nuremberg precedents do not include that definition.

Mr. HOSMER. And that those areas in which there is control both by civilians and by actual military forces and of a power military nature and a formal military?

Mr. McCLOSKEY. I am sorry I am not sure I understand the gentleman's question.

Mr. HOSMER. There are areas that can be bombed without incurring the designation of war criminality including habitated areas in which there are not only formal military forces but power military forces and insurgency type forces and also a mixture of civilian forces?

Mr. McCLOSKEY. I do not think my remarks extended to that concession.

My remarks went only to the fact of destruction of villages in South Vietnam by operations such as those I described here.

I do not think the question of whether or not the aerial bombardment of villages in which paramilitary or military forces are located is a war crime is covered by my remarks. I speak only to the Nuremberg precedents involving those villages in northern Norway and the comparison in that situation with the destruction of these villages in South Vietnam.

Mr. HOSMER. The gentleman is making the situation of the South Vietnam bombing, as I understand the situation, different at least from the Norwegian situation, in fact, that there was another governmental authority, for instance, in Vietnam or South Vietnam; namely, the South Vietnamese Government; is that not correct?

Mr. McCLOSKEY. The Government of South Vietnam claims jurisdiction over these villages as the government in Germany claimed jurisdiction over occupied Norway.

Mr. HOSMER. The Government of South Vietnam is the government recognized by the United States of America, is it not?

Mr. McCLOSKEY. That is correct.

Mr. HOSMER. At the same time their military operation in the South Vietnam theater are conducted in completed coordination and cooperation, are they not?

Mr. McCLOSKEY. There is no question about that.

Mr. HOSMER. A further question—with respect to the gentleman's various quotations about the situation in Laos, do I understand that there is more than one government in Laos?

Mr. McCLOSKEY. There are three recognized parts of that government—the Royalists, the Neutralists, and the Pathet Lao, at least dating from 1962. The four seats for the Pathet Lao have been held open in the Laotian government; they were assigned four seats.

Mr. HOSMER. Do these have jurisdiction over the entire country?

Mr. McCLOSKEY. I do not think that can be contended since at least 1962 in the contested areas.

But the Royal Lao Government which we support provided, as I recall, four seats to be held by the Neutralists, 11 seats to be held by the Royalists, and four seats by the Pathet Laos.

Mr. HOSMER. In a single parliament?

Mr. McCLOSKEY. In a single parliament.

Mr. HOSMER. Very well.

I would presume the jurisdiction through that geographical area was the Royal Lao Government.

Mr. McCLOSKEY. I cannot comment on that as an expert.

Mr. HOSMER. You state that the activities of the United States in Laos were in complete coordination and cooperation and with the approval of the Government, the Royal Government of Laos.

Mr. McCLOSKEY. I am not sure I understand that question either. My comments were directed at the Royal Lao Government.

There were tens of thousands of bomb strikes that were controlled by the U.S. Ambassador.

Mr. HOSMER. Did not the gentleman state that the bombing pattern was approved by the Royal Laotian Government?

Mr. McCLOSKEY. I cannot state that. The Royal Laotian Government has requested some air strikes that the U.S. Government has validated.

As I understand it, the U.S. forces requested the privilege of bombing other areas which the Royal Laotian Government approved. Presumably there is cooperation on both sides.

Mr. HOSMER. There was no doubt that in Laos the activities of the United States were in coordination with the legitimate and recognized Government.

Mr. McCLOSKEY. I cannot concede that. Whether the Government in Laos is a recognized and legitimate Government is somewhat confused.

Mr. HOSMER. The gentleman made reference to various newspaper articles, quoting the authors thereof, making the statement, at least, that the Pathet Lao were not in the area where these bombings have taken place. I would ask the gentleman whether he has any independent knowledge of whether the Pathet Lao or other military forces from North Vietnam were interspersed amongst the other people of a nonmilitary nature.

Mr. McCLOSKEY. The independent knowledge I have is partly from hearsay with reference to the statements I have quoted. It is partly in reference to a series of interviews that the Congressman from Contra Costa County (Mr. WALDIE) and I had on April 15, 1971. We each talked with groups or individual refugees totaling 16 in number from seven villages. In all but the initial five interviews by Mr. WALDIE, the refugees identified no Pathet Lao soldiers in the villages.

Mr. HOSMER. Could the gentleman state with any degree of personal cer-

tainty that those villagers to whom he talked, the villagers that the gentleman interviewed, were not in fact Pathet Lao themselves?

Mr. McCLOSKEY. I do not think that any American has ever been able to confirm with certainty that a Vietnamese or a Laotian with whom he had a discussion did not have private sympathies. Perhaps favorable to some other government. But to the best of my knowledge——

Mr. HOSMER. Is the gentleman by that point admitting that those people could be Pathet Lao, they could be military people who were bombed?

Mr. McCLOSKEY. No, I am not. But I can say this to the gentleman that at the conclusion of the 16 interviews, Congressman WALDIE and I directed questions to Father Menger, who is a very pro-Government interpreter, to say the least, and who had been there 15 years. We asked him, "Are we getting accurate information from these villagers?"

He said initially he thought we were not getting accurate information. I went down the list of questions that were asked—their age, where their village was, had the village been bombed. In each case he confirmed that we had gotten accurate information from the villagers in response to those questions except as to their ages.

Mr. HOSMER. That leads me to one final question. Assuming the poll was indeed an accurate one——

Mr. McCLOSKEY. You are referring to the U.S. survey?

Mr. HOSMER. The one you are talking about which stated that 82 percent of the bombing made it extremely difficult for them.

Mr. McCLOSKEY. Yes.

Mr. HOSMER. What of the other 18 percent who apparently felt that the situation was normal, or at least did not upset them or cause them any difficulty? I fail to understand that.

Mr. McCLOSKEY. I have only the survey the gentleman referred to so far as the gentleman quoted.

Mr. HOSMER. You did not talk to any in the 18-percent category?

Mr. McCLOSKEY. We were not privileged, with the 16 villagers with whom we talked, to find any villagers whose villages remained standing after the U.S. bombing attacks. They said every house was destroyed.

Mr. HOSMER. The fact is that 18 percent of the people interviewed apparently made no objection, or did not find the bombing made things difficult or impossible for them. That is a matter that interests me. It is very curious, it would seem. I had hoped that we might have some elucidation on that point.

Mr. McCLOSKEY. I did not see this report until the second morning I was in Laos. The two reports really do not explain what these 18 percent thought.

Mr. HOSMER. I thank the gentleman.

Mr. WALDIE. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from California.

Mr. WALDIE. I wish to commend the gentleman on the scholarly manner in which he has put together the facts which he has presented to the House.

I wish also to say that every inference and every reference to my participation in the accumulation of the information that he has presented to the House was accurate. I further want to say to the gentleman, as he well knows, that when we first left Laos, and on the way back, discussing the evidence we had in hand, that I was of the opinion that the evidence was sufficiently fragmentary that to draw the conclusion that the gentleman had drawn was incorrect.

And I suggested we should await further information as to whether that conclusion is an accurate and a correct conclusion. We have waited. We have waited months now, and I am aware of the efforts that the gentleman and I, too, have put in to seek additional information on the evidence as to what motivated the residents of the Plain of Jars into refugee status. None of that evidence has been forthcoming. I suggested to the gentleman on the way back from Indochina that it appeared to me all the evidence we had confirmed that the rules of engagement had, in fact, been distorted, if not violated, and that the burden of proof now shifted to the American authorities, who, in fact, run Laos.

It is a fiction to suggest that there is an independent Laotian Government. The American authorities run Laos, and they run it without much attention to any of the disparate groups that happen to occupy Laos. The major military force in Laos, as the gentleman is aware, and as most Members of this House are aware, is Veng Pao's Army, which is not under the control of the central government in Laos, such as it is, but which is under the control of the American authorities through the Central Intelligence Agency.

There should not be a man in this House who did not read the conflicting reports from Laos last week, where it was announced in the attempt to recapture the Plain of Jars, that the Royal Laotian Government did not have knowledge of that operation, that they claimed "it was an American operation." That was immediately denied by the American authorities and then later confirmed to be so.

It is, in fact, an American operation. It is a fiction to suggest there is a government in Laos independent of the American views and American objectives and American authority. There is simply no government in Laos which exists for that purpose.

It seems to me this entire debate, if the gentleman will permit the observation, reemphasizes the lack of wisdom in the House last week in failing to demand of the State Department and relevant agencies of the executive government a full accounting of the American involvement in Laos, such as the other body did in executive session. The least we should have done—and I personally see no reason for having an executive session—is to inform ourselves, if not the American people, as to precisely the extent of our involvement in Laos. We do not know. We can only speculate. We may err in our speculation. If we do err, it is because of the fact that the information which would prevent us from erring has been denied us.

The accusations made by the gentleman from California (Mr. McCLOSKEY) are generally accusations based on hard facts which came to his attention and mine. It is a tragedy that the gentleman has to speculate as to conclusions, because every fact necessary to end the speculation is within the executive branch of this Government, and is available for understanding and information and study of the executive branch, but it has been denied us.

If the Members of the House are unhappy with the observations which the gentleman from California (Mr. McCLOSKEY) has made and with which generally I agree, they have it within their power this afternoon to publicly ask what authority there is for our involvement in Laos, and they certainly should say it to the Members of the House.

Mr. RIEGLE. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Michigan.

Mr. RIEGLE. Mr. Speaker, I would like to ask any Member or the gentleman in the well to cite any authority which exists for any present warfare in Laos.

We can talk about if bombs were dropped and where, whether in southern Laos, over the Ho Chi Minh Trail, or in the northern part, but I am not aware of any congressional authority providing for any such military operations in Laos. If there is anyone here who can cite such congressional authority, as required by the Constitution, I wish he would do so at this time.

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. Does the gentleman from New York want to comment on that question?

Mr. KEMP. I have a question. The gentleman in the well asked a question.

Mr. McCLOSKEY. Before I yield to the gentleman from New York, is there anyone who cares to respond to the question of the gentleman from Michigan?

I would be glad to temper these suggestions or withdraw them if the Armed Services Committee or the Foreign Affairs Committee would prove otherwise.

Mr. KEMP. Mr. Speaker, did the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from New York.

Mr. KEMP. Mr. Speaker, the gentleman asked if there was a difference between what General Jodl had done in Norway and what happened in the I Corps area of South Vietnam. I would like to comment about that and ask a question. The gentleman mentioned both on the floor and in previous speeches that there were some 307 villages in the I Corps area which had been destroyed and that this was in fact the sort of thing for which General Jodl was hung. I believe to compare the conduct of the American Army in Vietnam with that of the Nazi general staff is a moral outrage and certainly is unpardonable slander.

The I Corps area is not some remote area of South Vietnam. It is where the DMZ is located. It is the home of the A Shau Valley, the main invasion route. It contains Khe Sanh and the jump-off point into Laos. It is at the outlet of the

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Ho Chi Minh Trail. In short it is the major battlefield of South Vietnam today and in the future.

If the Americans have moved those villagers out of their villages. it might be because that is necessary for their own safety. To shift people out of a battle area is different from moving them into slave labor camps. Let me quote to my colleague what Secretary General U Thant said in September 1970. He called on all belligerents, "to ensure that civilians are removed from or kept out of areas likely to place them in jeopardy or to expose them to the hazards of warfare."

The SPEAKER pro tempore. The time of the gentleman from California has expired.

THE BOMBING IN SOUTHEAST ASIA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GUBSER) is recognized for 60 minutes.

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. GUBSER. I yield to the gentleman from New York.

Mr. KEMP. I should like to quote Secretary General U Thant who called on all belligerents less than a year ago, in September, 1970: "to ensure that civilians are removed from or kept out of areas, likely to place them in jeopardy or to expose them to the hazards of warfare."

He made that statement. He has asked that we move these people out of the area where warfare is likely to occur.

I would suggest that the difference between what General Jodl did and what our Army did in the I Corps area is the difference between slavery and freedom in South Vietnam.

Mr. GUBSER. Mr. Speaker, this Nation and this Government face a crisis in confidence. Our people are weary of a war which nobody likes. There are racial tensions. We are confronted with difficult economic and social problems. In such a climate it is easy to sway student audiences and honest citizens who are tired of this war. It is easy to provoke their disillusionment into suspicion and outright hostility against established procedures and basic institutions.

Mr. Speaker, it seems to me that in such a time, if I may be allowed to use the words of one of my colleagues, and I quote:

> It behooves all of us . . . to try to establish the faith of the people in the Government and in the institutions of the United States.

Later in the same speech my colleague said in part, quote:

> We also must not bring disrespect upon the law and the institutions of this country. And when we ask the young people of the land to obey the law and respect it, at the same time we may contribute ourselves to a great disaffection between the public and the law and the government that administers that law.

These were the words of my colleague from California (Mr. MCCLOSKEY). They were not intended as a standard for criticism of the executive branch of Government, but of the judicial branch. But I submit and I am sure my colleague would agree that as members of the legislative branch have an obligation to reestablish the faith of the people in Government and in its institutions. I would parenthetically add the obligation to be responsible in our public statements.

Now that my colleague is an announced candidate for the Presidency of the United States on a platform which includes a pledge "to restore truth in Government," I know he would not argue against the need for responsibility in the public statements made by any Member of this body.

I know he would agree with me that we must not allow public policy debates to become, as the prominent Harvard urbanologist Nathan Glazer has described, an "assault on the reputation of America—which has already succeeded in reducing this country, in the eyes of many American intellectuals, to outlaw status."

That, Mr. Speaker, is what this debate today is all about.

Recently I took strong exception to certain statements made by my colleague, Mr. MCCLOSKEY.

On February 13 he was quoted in the San Jose Mercury-News as saying, and I quote:

> What we are doing in Laos is as great a crime as those we executed Japanese and German officers for in World War II.

The gentleman defends this statement with a lengthy discourse about South Vietnam. He also cites a newspaper article by Helen Emmerich, who quotes me falsely as she visited my office as part of the so-called Women's Strike for Peace after she had been fired by the newspaper which had originally sponsored her in South Vietnam.

I do not accept the validity of the gentleman's allegation that war crimes in Vietnam are the same as those for which Japanese and German officers were executed. But, I remind him that this debate is about Laos and our agreement was that we talk about Laos. I insist that he debate the quotation I have just cited which pertains to Laos and not South Vietnam.

On April 18 in an AP story, my colleague is quoted as saying:

> Our suspicion that this country is deliberately following the practice of destroying villages in Northern Laos is borne out by the evidence.

On April 18 a story from the Los Angeles Times bureau printed in the San Jose Mercury quoted my colleague as saying that:

> Since President Nixon came to office in 1969 American bombers systematically wiped out nearly all of the 3,500 villages in Northern Laos in an operation called "barrel roll" leaving a fourth of the nation's population homeless.

On the CBS "Face the Nation" program for April 18, my colleague said in part:

> I'm saying that our Air Force and Embassy are telling us that we are not willfully destroying villages. The facts are that we have.

On April 19 in the Washington Post my colleague is quoted as saying:

> There are some 9,400 villages in Laos and it looks to me that we may have destroyed thousands of them.

In the May 7 issue of Life magazine it is stated that:

> McCloskey accused Ambassador G. McMurtrie Godley of a "deliberate policy of destroying Laotian villages."

I contend that these statements injure the United States of America because if they are not correct, they undermine public confidence in this Government and they contribute to, again using the words of Nathan Glazer, "reducing this country in the eyes of many American intellectuals to outlaw status."

I contend further that these far reaching indictments of the U.S. Government and its policy are wrong and that Mr. MCCLOSKEY has not proven them.

I contend finally, that the gentleman had the responsibility and the solemn obligation to present a reasonable case in support of his indictment before he made it.

Long ago this Nation and one body of Congress rejected as unethical the practice of accusing individuals of disloyalty without proof. Certainly Members of Congress have an equal obligation to check out facts about their country before defaming it.

Mr. Speaker, the contentions I have previously outlined are the only issues involved in this debate. It was agreed in writing that they would be the only issues.

But contrary to the agreement, like a forensic pied piper, my colleague, Mr. MCCLOSKEY, has tried to gather issues from every nook and corner to lay a smokescreen over his decrepit and feeble case. The gentleman has underestimated me.

I must remind him of our agreement to confine the issues to our bombing policy in Laos. How we got into the war in Vietnam is not the question, the Pentagon papers are not the question, Vietnamization is not the question, Mylai is not the question, whether we should get out of Vietnam and how soon is not the question. I suspect that on these matters he and I will agree much more than we will disagree.

The only issue is: Are we wrongfully bombing villages in Laos? He says "yes" and I say "no." And I shall let my case speak for itself against his.

But if the gentleman feels that I have challenged his personal integrity, he is justified in arguing against the alleged challenge.

Apparently the great document caper which I described in my June 26 speech touched a nerve with the gentleman. Here are some of the things I said, and I quote:

> He was briefed by State Department officials before his departure and was told (please note this) that a USIS study had been done of one camp which housed refugees from 200 villages in the Plain of Jars area.
>
> The significant point is that Mr. McCloskey was told of the report before he left. When informed of its existence, he requested copies and was told that the survey could not be furnished him, but a five-page summary could be made available which had already been given to Senator Kennedy. The summary was delivered before his departure. (Please note again, he asked for the survey, knew of its existence, and received the summary before he departed.)

After his return from Laos, my colleague testified before Senator KENNEDY's Subcommittee on Refugees and stated that he did not see the copy of the summary until the morning of April 14, a fact of which I implicitly believe. In the same testimony at page 141 of the transcript, he states, and I quote:

It was in reading it [the refugee book] over at 6:00 o'clock that morning in the Ambassador's house that I came across the reference to this survey for the first time. (Please note the words "for the first time.")

In my speech on June 26, I asked this question:

How does this square with his request of the State Department before he left Washington for copies of both the survey and the summary?

I can readily understand why my colleague interprets these remarks as an attack upon his integrity. I regret this interpretation and suggest that a careful reading of my speech shows that it is susceptible to another interpretation other than one of having misrepresented the truth. I am glad to accept his explanation today and I say for the record my colleague did not misrepresent the truth —he just forgot it. I do not believe he deliberately forgot the truth, I think he just inadvertently forgot it.

I stand on the statements made in my June 26 speech and I submit additional proof as exhibit A which I shall include at the conclusion of my remarks. This exhibit is an exchange of correspondence between Secretary William Sullivan and me.

By way of summary of this exhibit let me say that on July 2 I wrote Secretary William Sullivan and asked specifically if Mr. MCCLOSKEY had been informed of the USIS survey on refugees. My reply from Secretary Sullivan dated July 8 states that on March 31 he was informed that two surveys had been prepared and that on April 1 a copy of the summary was given directly to Congressman MCCLOSKEY. Please note the word "directly."

And so I repeat that my colleague did not misrepresent the truth, he forgot it.

While we are on the subject of faithful representation of what others say, let us explore another incident.

One of the keystones of my colleague's arguments that the United States is engaged in a policy of indiscriminate bombing of villages in Laos is a conversation he had at Udorn Air Force Base on April 13, 1971, with Capt. Marshall L. Michel, an experienced RF–4 pilot.

Here are some of the things my colleague has said publicly about this conversation with Captain Michel.

On the CBS "Face the Nation" program on April 18, my colleague said a captain in the Air Force told him that he had flown over most of the valleys of Northern Laos and said:

I have yet to see a village beside a road.

In his statement before the Kennedy Subcommittee on Refugees, Mr. MCCLOSKEY said on April 21:

At the Udorn Air Force Base in Thailand, Headquarters of the 13th Air Force, we were told by an aerial reconnaisance pilot on April 13, "I have flown over a lot of river valleys in Northern Laos these past four months, Mr. Congressman, and I haven't seen any villages along LOCS (Lines of Communication)."

In an AP story quoted in the Washington Star for April 18, Mr. MCCLOSKEY is quoted as having said:

We had officers who fly over Northern Laos every day tell us that they can find no villages standing.

Mr. Speaker, there is no question that these statements taken in context with other allegations made by the gentleman from California clearly indicate that they were offered as support for his contention that we are engaged in a policy of indiscriminate bombing of villages in Laos.

Now let me quote from an official, unclassified TWX received from Headquarters of the 13th Air Force on April 21, 1971:

REPRESENTATIVE MCCLOSKEY INTERVIEW ON FACE THE NATION

1. Following information forwarded per ref MSG concerning statement attributed to a Udorn captain by Congressman McCloskey on 18 April Face the Nation program.

2. Captain Marshall L. Michel, III, an experienced RF–4 pilot, 14th Trs. 432nd Trw. Udorn RIAFB, Thailand, was among those Udorn personnel interviewed by Rep McCloskey. Rep. McCloskey, while visiting 432nd Trw. asked Capt. Michel if he picked given villages in Northern Laos, could he be shown recce photos of them. Route seven was drawn in on a current 1:250.000 Map. Rep. McCloskey circled approximately.

Six villages. Capt. Michel informed the Congressman that route seven was the primary loc into Northern Laos and the primary supply route for the NVN and, as such, was heavily defended. He also mentioned that he had done a report on Laos his freshman year in college (1961) and that fighting had been going on in the PDJ area at that time. Capt. Michel, who arrived Udorn Dec. 70, stated that, quote: I have never seen an active village along that Loc (route seven) and neither has anyone else to the best of my knowledge, unquote. He further stated that since they were semi-nomadic farmers, they had probably left long ago for quieter areas.

3. This headquarters reviewed audio portion of program as well as transcript, and it is evident that Capt. Michel was quoted out of context. Rep. McCloskey's allegations appear mainly built on premise that, if a map shows villages. But recce photos do not, then it follows that villages must have been destroyed. This was not the question put to Capt. Michel or others.

Mr. Speaker, I was not satisfied with just this much evidence since it might be rebutted as a self-serving Air Force interpretation. So I asked to talk to Captain Michel by telephone. I did so on July 7. The conversation was recorded and is in my files. At the conclusion of my remarks I shall include a full transcript of the conversation as exhibit B.

My conversation with Captain Michel can be summarized in this way: Mr. MCCLOSKEY had an old, out-of-date map which did not correlate with current maps, so a new one was furnished. Captain Michel drew a line along route 7, a principal line of communication in the Plain of Jars area. Mr. MCCLOSKEY circled several villages and asked to see pictures of those villages.

Two pictures were furnished and showed no bomb craters within 500 meters of the villages, a fact which Mr. MCCLOSKEY has not told his public.

Later in the conversation Captain Michel emphatically disavowed the thrust of what Mr. MCCLOSKEY attributed to him. I referred to Mr. MCCLOSKEY's statement and then asked:

Did you mean to imply when you made that statement that those villages were no longer there because they had been destroyed by bombing?

Captain Michel's answer was:

No, Sir, I certainly did not.

If my colleague does not believe my version of this conversation I invite him to join me in making another call to Captain Michel with the press and the whole world listening in. I throw this out as a challenge. I ask my colleague to retract his statements about Captain Michel or join me in making a phone call.

It might be useful at this point to determine exactly what our policy is with respect to bombing in Laos.

First, no target in that country can be struck without permission of the Royal Laotian Government and upon request of the Royal Laotian Government.

Second, the target must be approved by the U.S. Embassy which pays particular attention to the possibility of civilians being struck. No village can be struck unless it has been designated by the Royal Laotian Government as a military target and even in some cases the Embassy does not approve such designated targets because of possible injury to civilians.

Then, each U.S. Air Force pilot is subject to very strict rules of engagement. No bombs can be placed within 500 meters of an active village which consists of one or more standing structures.

The role and mission of the U.S. Air Force in Laos is: First, the interdiction of combat supplies and munitions; second, support of friendly ground forces and the support of LIMA outposts from which the Meo tribesmen conduct their military operations. There definitely is not a policy of bombing to achieve dislocation of civilian population. Proof that this selective bombing policy has been followed is that most refugees come from the area where ground fighting has been most intense.

Subject to these strict rules of engagement, a pilot must first check into an area with the Airborne Command Comptroller, then he must check in with a Forward Air Controller and often his operation is monitored by TACAN and radar. Following the strike, a bomb damage assessment report is filed by the pilot, it is usually verified by his wingman or other pilots who accompany him on the mission, it is verified by the Forward Air Controller and relayed by the Airborne Command Controller. Every possible precaution is taken against violation of the rules of engagement.

It is this policy which my colleague has said has been repeatedly violated and has been subverted into one of deliberately destroying villages and indiscriminately bombing civilians. He seems to rest his case upon five points: First, reports given him prior to his departure for Laos; second, conversation with pilots at Udorn Air Force Base; third, a USIS report which he says clearly shows that the most compelling reason for the generation of refugees is American bombing; fourth, interviews with 16 ref-

ugees; and fifth, the inability of the State Department and the Air Force to furnish certain pictures which prove his accusation to be wrong.

Now let us explore each of these points.

1. REPORTS PRIOR TO DEPARTURE

There are dozens of groups here in Washington and across the Nation which distort the truth with respect to this Nation's actions in Souheast Asia and it is not difficult to find information from any one of them which would go so far as to say that we do indiscriminately bomb civilians. One such group is Project Air War which boasts of the fact that they did talk with Congressman McCLOSKEY before his departure for Laos. This group is headed up by Mr. Fred Branfman who had been expelled from Laos by the Royal Laotian Government and who has been active as a legman and interpreter for visiting delegations to Laos of American antiwar personalities, including some who were traveling through Vientiane en route to or from Hanoi. The literature prepared by Project Air War bears a striking resemblance to the type of thing which Congressman McCLOSKEY charged before his recent trip to Laos.

This is not to say that information furnished by such groups should be discounted, but I do say that such information needs corroboration and confirmation.

2. CONVERSATIONS WITH AIR FORCE PILOTS AT UDORN

I have already exposed the manner in which conversations with Air Force pilots at Udorn Air Force Base in Thailand have been quoted out of context and connotations have been placed upon those conversations which are not accurate. It is obvious, I believe, from what I have previously said, that this point does not support Representative McCLOSKEY's conclusion that we have pursued a policy of deliberately bombing villages.

3. USIS REPORT

Then there is the famous U.S. Information Service report about which the gentleman had been told prior to his departure. The reports told of a survey made of about 200 refugees, all of whom had come from a particular area which had been occupied by the Pathet Lao and the North Vietnamese, and where ground fighting had been particularly intense. The survey was ordered because somehow the people in these particular camps were different. In other words, they were not typical of the average Laotian refugee.

The report showed that of these people, 48 percent said they left their homes for fear of bombing. Please note that the report says for fear of bombing and not actual bombing as Mr. McCLOSKEY has stated. Fifty-one percent had other reasons for becoming refugees including their dislike of life under the Pathet Lao and the North Vietnamese, their resistance to enforced slavery as porters and the 15 percent rice tax imposed upon them by the North Vietnamese Army.

Some of the things which Representative McCLOSKEY did not say about this particular survey are as interesting as some of the things he did say. For example, another survey had been furnished him in addition to the one he mentioned and this showed that only 28 percent of refugees interviewed had left their homes for fear, and I repeat, for fear of bombing. The gentleman also failed to mention that these surveys reported that 95 percent of the Laotian refugees would not return to their homes if they were still under Communist rule, even if peace came. My colleague also failed to candidly state that those who did the interviewing for the survey had serious doubts about the statistical validity of their findings. One said, and I quote:

In order to get thorough information and good statistics we must spend at least a week in each refugee center so that we would be able to gain some confidence from the refugees.

The interaction between the respondents and the investigators usually took place amidst a crowd of refugees who not only liked to watch, but also liked to help the interviewed in answering the questions.

In another survey an interviewer said, and I quote:

The same factors that limited the report on the Plains of Jars refugees—lack of time, bad weather conditions, the interviewers lack of experience—hampered this operation, too.

Thus, I conclude that the USIS report does not support my colleague's far-reaching conclusion.

4. INTERVIEWS WITH REFUGEES

In his 48-hour visit to Laos, Congressman McCLOSKEY interviewed exactly 16 refugees, and states that 76 percent of them said their villages had been destroyed by bombing. And from this figure he extrapolates the implication that 76 percent of 3,500 villages have been wantonly destroyed by U.S. pilots.

It is interesting to note that William H. Hecht, special assistant to a delegation of U.S. churchmen which was in Laos on exactly the same day as my colleague, has told me that he and three of his associates talked to roughly 150 refugees on the same day as Mr. McCLOSKEY interviewed 16. Mr. Hecht and his associates, Dr. J. A. O. Preus, international president of the three million member Lutheran Church of the Missouri Synod, Archbishop Joseph T. Ryan, National Conference of Catholic Bishops and presently the Archbishop of Anchorage, Alaska, and formerly head of all Catholic Relief Work in the Middle East and a close personal friend of Pope Paul VI, and Dr. Nathan Bailey, president of the Christian and Missionary Alliance, all disagreed with Representative McCLOSKEY's findings. Mr. Hecht told me:

Our assessment was that refugees considered the bombing a blessing and it actually freed them from the North Vietnamese. The Pathet Lao weren't so bad, but the North Vietnamese were brutal and ruthless and they did not want to live under them.

Mr. Hecht had a lengthy conversation with Rev. Ed. Roffe, who, with Father Matthew Menger, a Jesuit priest, acted as an interpreter for the McCloskey party. Apparently my colleague distrusted Father Menger's translation and interviewed some of the same refugees using Rev. Ed Roffe as interpreter. Reverend Roffe has told Mr. Hecht that he detected no discrepancy between the answers given by Father Menger and those which he heard from the refugees themselves.

Mr. Hecht has also said that Rev. Wayne Persons, who has spent 26 years in Laos, all of them in the jungle as a missionary to tribesmen, personally confirmed all that he told me.

In a cablegram I have received under date of July 7, Rev. Ed Roffe, who has been in Laos for 42 years since early 1929, was the first person from the Western Hemisphere to establish residence in Laos, the first white man to become a Lao citizen, and the author of a Lao-English dictionary, has said, and I quote:

The refugees stated that they left because of the bombing and that meant at the very least that they left because the bombing eventually made it possible for them to leave. They pointed out that—and this was completely overlooked in subsequent reporting—that their loyalties, their sympathies, their ties, were all with the Royal government of Laos and they were happy to be able to rejoin those of "like precious faith." The bombing made it possible for them to flee an area which was under a repressive political regime, where religion was suppressed, and where they were subject to enforced labor, etc. If these people have any serious complaint, it surely is not that they and their villages were bombed, but rather that unfriendly forces imposed harsh conditions on them without warrant. The bombing was a direct result of the unjustified presence and completely unwelcome practices of these intruders.

Thus, I conclude, Mr. Speaker, that the interviews with 16 refugees when related with other facts fail to prove Mr. McCLOSKEY's allegations of indiscriminate bombing of villages by the U.S. Air Force.

5. SHOW ME PICTURES TO PROVE I AM WRONG

As the fifth pillar of his indictment of our national policy, Mr. McCLOSKEY seems to place great weight upon the fact that to this point he has not been furnished with photographs which prove that he is mistaken. As a lawyer he would not dare face a judge with that kind of a case. But apparently he considers the ethics of argument to be different for a politician than for a lawyer.

I am informed that the American Embassy in Vientiane offered to provide Congressman McCLOSKEY with photographs of Laotian villages. In addition Congressman McCLOSKEY was offered a flight north of the Plain of Jars in the site 50 and site 32 areas and then a trip to Luang Prabang to see refugees in that area. He was also offered the opportunity to fly over the city of Attopeu in southern Laos, which has been in enemy hands for almost a year. All of these proposals were designed to show the Congressman that many towns and villages in enemy-held territory have not been damaged by bombing. He turned down all of these proposals.

The undiscerning and those who want to believe that our national policy is one of commiting war crimes and genocide are impressed with Mr. McCLOSKEY's demand that the State Department produce photography which shows villages still standing. I am sure that as a trained lawyer my colleague would not dare go into court with a case which says in effect, "You are guilty of genocide, now prove that you are innocent." This old "Have you stopped beating your wife?" type of argument is totally foreign to

justice and fair play. Yet he employs it here.

Let us explore this picture problem in a little depth.

In the first place, current maps of Laos, even those put out by the Army Map Service, are based on information which frequently dates back to the days of the French. The weather and the elements, and the seminomadic nature of the people have caused most villages to be relocated every 5 to 7 years in the area under discussion. An old photograph of a village is no proof that the village has not been moved for reasons not associated with warfare.

Second, military reconnaissance missions are flown to serve military and not political purposes. The Air Force mission is to interdict and destroy military supplies and to support frendly ground combat forces and, on occasions, to fly cover for the evacuation of refugees who choose to go with retreating friendly troops instead of living with the North Vietnamese and Pathet Lao. As a result reconnaissance photography is concentrated along lines of communications and route structures and in this part of the world there just are not many villages in such areas. While it is true that most of the Plain of Jars must have been photographed at some time, there is no way of telling that old photography could answer the gentleman's current questions.

Third, if photography shows that a village has been destroyed, will it conclusively prove that it was destroyed by American bombing or whether it was caught up in an exchange of mortar and military fire between Communist troops and Royal Lao forces? At this point, let me emphasize that most of the destruction of villages has occurred from ground fighting. As an example of what ground combat can do to a village, I show you two photographs. One was taken on the 16th of May 1971 of the friendly Laotian village of Dong Hene in the panhandle area. Please note the standing structures in the rectangle which I have enclosed in red.

On the following day, May 17, two North Vietnamese Army regiments directed rocket and mortar attacks against the village. In the 9-hour attack 40 percent of the village was destroyed. Now I show you a photograph of the same village taken on May 19 with the same rectangle enclosed in red and you will note that practically nothing has been left standing. From May 20 until May 28 still another 40 percent of the town was destroyed and as a result a total of 3,101 refugees were evacuated.

Throughout this period not one United States or Laotian air strike was conducted against Dong Hene. Certainly this is evidence that photography does not justify the conclusion that a destroyed village was necessarily bombed or burned out of existence by air attack. Ground combat is a major cause of destruction of villages in Laos.

Fourth, will photography show whether a village had already been evacuated before a bombing attack was made in support of ground fighting? Father Matthew Menger, a Jesuit priest who has been in Laos almost 20 years, relates an incident about an attack against the twin villages of Nong Veng and Nong Bua in the province of Paksane which has been occupied by North Vietnamese and Pathet Lao troops. Father Menger reports that based upon an interview with a village school teacher, Khainun Chansai, that only four, I repeat only four out of 250 huts were destroyed and no civilian casualties were caused by bombing. Four civilians were killed in a crossfire between Lao and Communist troops but none were killed by bombing! The teacher spoke with great admiration of the preciseness of the bombing and the fact that a gunship stayed in the area for several hours without once firing into the village.

It is interesting that this same attack was reported in Le Figaro, dateline March 10, 1970, under the byline of Jacques Doyen and Guy Hannoteau. These men, who were not on the scene and arrived sometime after the battle, said, and I quote:

> The Pathet Lao were refuged there and had organized football games with the population before being surprised by the bombs . . . Here and there are the remains of houses.

Does this sound like only four hits out of 250?

This is an example of how destruction from ground fighting is, with the cooperation of a very few members of the press, exaggerated and made to appear as the work of American bombers.

Fifth, even if photographs would show a destroyed village with bomb craters inside the village, will the photograph give any clue as to whether the target had become a military objective because enemy supplies and munitions were stored there? I can assure you that for every structure destroyed by bombing, there has been more than a 1-for-1 number of secondary explosions. If a village stores POL, guns, and ammunition which explode after it is hit, can anyone argue that it was not a proper military target? And the Royal Laotian Government was justified in designating it as a miiltary target?

Sixth, would a photograph show whether a bomb crater had been caused by the Royal Lao Air Force or the U.S. Air Force? It is well known that hundreds of sorties are flown by Royal Lao pilots and that all air operations by any pilot, United States or Lao, are at the request of the Royal Lao Government.

Considering these questions, any fair-minded person will agree that the gentleman's use of the photography argument is unfair.

In my search for hard data to rebut the allegation that we are systematically destroying Lao villages, I came across an article in the Washington Evening Star written by Orr Kelly which reported on a study ordered by Deputy Assistant Secretary of Defense Dennis J. Doolin. This study showed that in South Vietnam where 5 percent of the population was within 1 kilometer of an air strike in January 1969, only 0.9 percent or less than 1 percent of the population was within 1 kilometer of a bomb strike in 1971. The methodology of this study interested me and I asked for more information. It turned out that data on bomb strikes in South Vietnam stored in Pentagon computers is so complete that it was possible to almost draw a map which plotted bomb strikes in proximity to population centers. The next question I asked of the Pentagon was obvious. Why can you not furnish me with such information for the Plain of Jars area in Laos?

I was informed that the data available for Laos was in no way as sophisticated as that for South Vietnam. It would not be possible, I was informed, to correlate bomb strikes with population. Finally, I asked what about structures? You have bomb damage assessment reports, why can't you correlate bomb strikes with density of structures?

I have recently seen some preliminary data based upon what information is available. For good and obvious reasons the numbers must be classified and cannot be reported and made public property. But, nevertheless, I feel I am justified in drawing a conclusion from data I have seen. Since this argument is primarily between Congressman McCLOSKEY, and me, I point out that every bit of information which has been made available to me is also available to him. I emphasize that I asked for this information and apparently he has not. All he needs to do is ask and he can have every fact furnished to me. I am confident that he will respect the sensitivity of the information.

A representative sample of a major portion of the area which Mr. McCLOSKEY designated when visiting Laos and Udorn Air Force Base has been selected. It is an area 26 kilometers by 27 and is the area where ground fighting was most severe and bombing sorties most numerous. This totals out to 702 square kilometers.

If one divides each of these square kilometers into categories of zero to four structures per square kilometer, five to nine structures per square kilometer, 10 to 14 structures per square kilometer, and more than 15 structures per square kilometer, and compares the number of bombing sorties against those areas, he will have the only logical methodology which is addressed to the question, "Are we bombing areas with a high density of structures?" From the information I received I say categorically there is practically no difference between square kilometers with very few structures and those with many more. If a bar graph were to be developed, I am confident that they would be practically even. In fact, I fully expect subsequent data to emphatically prove that the highest number of bombing sorties occurs in the areas with very few structures.

This tends to prove the argument I have been making right along. Military targets, which are all we hit, are almost always away from the villages.

As the concluding portion of my contention that my colleague failed to present proof that we are following a policy of deliberately bombing Laotian villages, I shall quote several distinguished individuals. First I shall quote Deputy Assistant Secretary of State William H. Sullivan who was Ambassador to Laos until 1969. Mr. Sullivan states:

> Rules of Engagement which are designed to protect the civilian population have been in effect since 1965 and with respect to this safety feature have not been altered.

Later he says:

Procedures for proper validation, control and execution of air strikes have been carefully developed, in order to insure that active villages, indigenous population, and other non-military targets were not brought under attack. These procedures have been followed and have been effective.

It is interesting that in his argument which preceded my remarks, my colleague has placed great weight upon Secretary Sullivan's testimony regarding his practices when he was Ambassador to Laos. These practices, if I interpret the gentleman's remarks correctly, are intended to justify his case that we have engaged in indiscriminate bombing of villages.

But is not it true that the gentleman on numerous occasions has said that improper bombing was not practiced under Ambassador Sullivan, but only under Ambassador Godley and after President Nixon came to office?

Mr. Speaker, if my colleague Mr. McCLOSKEY is right in his accusation then Mr. Sullivan has not told the truth.

Mr. Ed Archer, a young foreign service officer, spent several hours with me in my office discussing this situation. I was most impressed with his sincerity and his knowledge of the subject. Mr. Archer was the officer assigned to check proffered target listings and make recommendations to the Ambassador. He served under both Ambassador Sullivan and Ambassador Godley.

On July 9 Mr. Archer said to me and I quote:

While I was in Laos from September 6, 1968, to February 19 1971, I do not know of a single incident of indiscriminate bombing of any village.

Mr. Speaker, if my colleague Mr. McCLOSKEY is correct in his accusation, then Mr. Archer is not telling the truth.

On July 7 I received the following message from Ambassador Godley, and I quote:

I am prepared to state under oath that ever since I have been in Laos, this mission and U.S. Air Force have done everything possible to avoid any bombing of inhabited villages or even isolated dwellings in Laos.

Mr. Speaker, if my colleague Mr. McCLOSKEY is correct in his accusation, then Ambassador Godley is not telling the truth.

On July 7 I received a cablegram from Father Matthew Menger, the Jesuit priest, who has worked with the Meo tribes for almost 20 years. He says in part:

It is my opinion that the allegation of U.S. policy to indiscriminately bomb Lao villages is erroneous and absurd . . . In private conversation I have been advised by former Ambassador to Laos William H. Sullivan, and present Ambassador G. McMurtrie Godley, that all U.S. bombing raids in Laos are approved prior to the mission by the American Ambassador, and that no bombing raid is permitted within a determined radius of an inhabited village. At various times, the American Ambassador has refused to permit certain bombing missions lest civilian casualties occur. There is no justification for doubting the knowledge or veracity of these two distinguished American Ambassadors, both career officers of proven integrity and honesty.

Mr. Speaker, if my colleague Mr. McCLOSKEY is correct in his accusation, then Father Matthew Menger is not telling the truth.

Rev. Ed Roffe, who has spent 42 years in Laos in the Christian and Missionary Alliance, is a Laotian citizen. As a Canadian by birth he is under no obligation to support or justify the policies of the Government of the United States. He says, and I quote:

It is my sincere and considered opinion that the use of the term indiscriminate is quite unjustified in reference to the admittedly regrettable, but apparently necessary bombing that has occurred in Laos.

For the benefit of those who would like to read Reverend Roff's complete statement, I include it at the conclusion of my remarks as exhibit C.

Mr. Speaker, if my colleague Mr. McCLOSKEY is correct in his accusation, then Rev. Ed Roffe is not telling the truth.

I have previously reported a quotation by Mr. William H. Hecht which conveyed the consensus opinion of Dr. J. A. O. Preus of the Lutheran Church, Archbishop Joseph T. Ryan of the National Conference of Catholic Bishops, and Dr. Nathan Bailey, President of the Christian and Missionary Alliance, as well as Rev. Wayne Persons who has spent 26 years in Laos.

Mr. Speaker, if my colleague Mr. McCLOSKEY is correct in his accusation, then these churchmen, too, are not telling the truth.

As exhibit D I shall include statements from several Air Force officers which were made to me in my office on July 7, 1971. Typical of these statements is this one from Brig. Gen. Daniel "Chappie" James, Jr., who flew over Laos in 1966 and 1967:

I know I didn't indiscriminately bomb civilians, I know my pilots didn't—I stake my professional reputation on it.

I remember the village of Sam Neua. This was the headquarters for the Pathet Lao which we were forbidden to hit in 1966. We were forbidden from hitting it even when we received fire from the village. I never got shot at so much in my life as at Sam Neua, yet I couldn't bomb it.

Mr. Speaker, if my colleague Mr. McCLOSKEY is correct in his accusation, then these Air Force officers are not telling the truth.

I believe one of the best opinions as to whether or not my colleague proved his case came from Mr. Lou Cannon, one of the newsmen who accompanied him on his trip. Lou Cannon is considered one of California's outstanding reporters and was winner of the 1968 Political Science Association Award for Distinguished Reporting of Public Affairs. Mr. Cannon wrote, and I quote:

But even on the Laos portion of his mission, McCloskey failed to establish all that he had said at home. He also overspoke himself on a national television program the Sunday after he returned declaring that "thousands" of villages had been destroyed.

Mr. Speaker, if my colleague, Mr. McCLOSKEY, is correct in his accusation, then Lou Cannon has not written the truth.

Mr. Speaker, are Mr. Cannon, Father Menger, Reverend Roffe, Ambassador Godley, General James, and others all not telling the truth? Are all of these distinguished people wrong and only one man right? I leave you and the American people to decide for yourselves whether, as Representative McCLOSKEY alleges, this country is engaged in a policy of indiscriminate bombing of villages and civilians, whether we are in effect committing genocide as a nation and whether our moral standards have sunk to a level so low that official policy would sanction such a horrible thing. I, for one, Mr. Speaker, do not believe the gentleman from California has proved his case and by making an accusation without proof, I think he has done serious harm to this great Nation.

Mr. Speaker, from this point on my remarks are not addressed specifically to the gentleman from California (Mr. McCLOSKEY) they are intended for all Americans.

It used to be said during World War II and the Korean conflict that a man in uniform could not buy a drink. As a means of showing our appreciation we civilians insisted on buying. But today's GI wears civilian clothes on leave or liberty to avoid the obscenity and ridicule which is often aimed in his direction.

True, the modern GI is fighting in a war which most Americans do not approve, but is the flesh and blood and soul of the man who wears that uniform any different? Is he without feelings and sensitivity?

Because a man wears an uniform is he less human? Does he not love his family? Does he reject peace as a way of life? Does he live to kill? Is he immoral? Atheistic?

We all have the right to doubt national policy in Southeast Asia, and moreover we have the obligation to change a policy when we do not agree with it. But in the name of pleading for change, do we have the right to use the broad brush and discredit basic institutions?

One man's lies do not make this a nation of liars. Does one mistake contaminate all that is good in America? Instead of seeking out the disillusioned and fanning their disillusionment into hate and disrespect for the basic institutions of a great nation, is not it time we talked about what is good in America. Is not it time we honestly compared our standards of freedom and morality with the Communist world?

Is not it time we thought about the GI who could at this moment be leaving on a dangerous patrol from which he might not return. How do you suppose he feels when he knows that some of his national leaders say this Government cheats, lies, and is immoral?

What about the prisoners of war who may be listening to Hanoi Hannah right now as she quotes Senators and Congressmen who degrade our national image?

What about the pilot who may go down in flames tonight? Does he not have the right to die knowing his Nation does not consider him a murderer but respects him as a man doing his duty as an honest professional? What about all our military men who have fought a war we would not let them win under the most incredible political restrictions in history?

I say it is time some of us stop leaving the field, the news columns, and television screens to only those who degrade, deface, and besmirch the image of a gov-

ernment and a nation which, though not perfect, is still imperfect man's closest approach to a perfect government.

We have waited too long—let us stand up and be counted.

EXHIBIT A

JULY 2, 1971.

Hon. WILLIAM H. SULLIVAN,
Deputy Assistant Secretary of State,
State Department,
Washington, D.C.

DEAR AMBASSADOR SULLIVAN: It is extremely important to me to have answers to the following questions. I sincerely hope that you can furnish them.

1: Did State Department officials brief Representative McCloskey before his recent trip to Laos? Did they inform him of the existence of a USIS survey on refugees? And, did he request a copy?

2: Was the Embassy in Vietiane informed on date of April 9 that Representative McCloskey had been furnished with a summary of the above mentioned survey? And, was the text of that summary sent to the Embassy?

3: Did the Embassy receive such a communication, if it was sent, prior to April 13?

Thanking you and trusting you can provide me with a written response to these questions by Wednesday, July 7, I am

Yours sincerely,

CHARLES S. GUBSER,
Member of Congress.

DEPARTMENT OF STATE,
Washington, D.C., July 8, 1971.

Hon. CHARLES S. GUBSER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN GUBSER: In response to your letter of July 2, 1971, I am providing below the answers to your questions concerning Laos.

1. Prior to his private trip to Southeast Asia, Congressman McCloskey asked for a briefing on Laos, and a Department of State official briefed him on March 31. During the course of this briefing, Congressman McCloskey asked about surveys concerning refugees prepared by the American Mission in Laos. The Department officer said that two surveys had been prepared but were not available here; a summary had been prepared for the Senate Subcommittee on Refugees and Escapees. The Congressman did not at this time formally request a copy of either the two surveys or the summary. In a subsequent conversation on April 1 with an official of the U.S. Agency for International Development, a copy of the summary was given directly to Congressman McCloskey.

2. Because the same version of the summary which had been provided to Congressman McCloskey was not available to Embassy Vientiane, the Department of State cabled the text to Vientiane with the notation that it had already been furnished to Congressman McCloskey.

3. The Embassy received the text of the summary shortly after it was sent; it was therefore in the hands of responsible officers of the Mission by April 10, Vientiane time.

I hope that these answers may be helpful to you. If I can be of any further assistance, please let me know.

Sincerely,

WILLIAM H. SULLIVAN,
Deputy Assistant Secretary for
East Asian and Public Affairs.

EXHIBIT B

TRANSCRIPT OF RECORDED TELEPHONE CALL BETWEEN CAPT. MARSHALL L. MICHEL, USAF, AT UDORN AFB, THAILAND, AND CONGRESSMAN CHARLES S. GUBSER, JULY 7, 1971

CSG: I am calling you to ask for your version of the conversation which reportedly took place between yourself and Congressman Pete McCloskey when he visited Udorn Air Force Base early in May, I guess it was. Who was present, Captain, when you talked with Congressman McCloskey? And could you give me first names?

Capt. M: Col. Mann [sp?], Wing Commander; Col. Merrick [sp?], our Assistant Director of Operations; I think Major Bill Roberts.

CSG: That's sufficient. Captain, as you probably have heard, Representative McCloskey is talking about his conversation with an unnamed Air Force Captain, which we believe is you, and he is using your conversation as justification for the fact that he believes we have indiscriminately bombed villages in Laos. Would you respond to that by just telling me exactly what was the sum and substance of your conversation with Congressman McCloskey? Just start from the beginning.

Capt. M: Yes, sir. We were—he asked about villages in northern Laos and where we flew and where the villages were. I explained to him that our targets were, for our reconnaissance missions, were what we call LOCs (lines of communication). I drew in one on a map that runs from an area which we call the Fish's Mouth to the Plain de Jars and Highway Nos. Route 7.

CSG: May I interrupt and ask, did he ask you to draw a route or did he draw this himself?

Capt. M: No, sir. He had a map with him that was a very old out-of-date map and we didn't correlate it with our current maps, so I pulled out one of our maps that we mission plan off of and drew the route in itself. The route is on the map, but I penciled it in so that it showed up better.

CSG: Now, what did you say to him after you penciled in this Route 7?

Capt. M: Yes, sir. He said, "All right, I'd like to see pictures of villages along this route" and there were several listed along there, and I said that even this map was an old map and that these villages were probably not there. I believe Major Roberts went out to get pictures of this area to check. But I said that the villages were probably not there because the people had been using this route for, I knew, at least ten year.

CSG: Using it in what way? [Overlapping conversation.]

Capt. M: . . . in 1960, I did a report on the Plain de Jars in college and they were fighting there during this time.

CSG: In other words, this route was being used for military purposes and the villages were destroyed in military operations, or just abandoned?

Capt. M: Yes, sir. As far as I know, they were—I speculated that they had been long since abandoned. These people had, you know, they're farmers and somebody plants a 37-millimeter gun in your rutabaga patch—you're going to move it across the hill.

CSG: Isn't it also true that these people in this area sometimes just move (regardless of) whether there is a military operation? Aren't they semi-nomadic?

Capt. M: Yes, sir. I would say that they probably would—I don't know that much about it, but I would think that any sort of unusual activity would cause them to move . . . for some reason, where their living is not viable, then they'll just move across the hill.

CSG: I see. Well, now, it's been reported that you told Representative McCloskey that you personally had never seen an active village along the LOC or Route 7.

Capt. M: Yes, sir. I said that I had never, I personally had never seen an active village along this route.

CSG: Well, now, did you mean to imply with that statement that those villages were destroyed by bombing?

Capt. M: Did you say by bombing, sir?

CSG: Yes, did you mean to imply when you made that statement that those villages were no longer there because they had been destroyed by bombing?

Capt. M: No, sir, I certainly did not.

CSG: Well, would you mind telling me what your connotation was?

Capt. M: That there were no longer people living along this particular route. But I did not say that they had been bombed. I can't remember exactly, but that had come up in the conversation and, no, I wouldn't say that they've been bombed and we looked at the area quite thoroughly since then and I haven't been able to find any evidence of that.

CSG: Have you found any villages in the area since this occasion?

Capt. M: Well, sir, this thing sort of became an item of interest in the squadron. Since it came out we found quite a few up in northern Laos along Lines of Communication.

CSG: I see—go ahead.

Capt. M: . . . one particular route which is their main highway, so to speak, does not really have any.

CSG: If the thrust of Representative McCloskey's statement, which he attributes to you, was that American air activity has destroyed the villages upon the Line of Communication which you drew on this map—is that a proper quotation, or paraphrase of your conversation?

Capt. M: No, sir, it wouldn't be.

CSG: All right. Do the other officers, Col. Mann and Col. Merrick, and Gen. Evans—have you discussed this conversation with them?

Capt. M: Yes, sir, we discussed it quite at length after it came out in the newspapers.

CSG: And do they concur in what you're telling me now?

Capt. M: Yes, sir, they do.

CSG: Well, this definitely fulfills my requirement, Captain, and I am very grateful to you for being so explicit and clear-cut in your statements, and I want to thank you for it and I want you to know that a lot of us back here in Congress are backing you guys up. So I thank you very, very much. Okay?

Capt. M: Yes, sir, we appreciate it.

CSG: All right, sir. Bye.

EXHIBIT C

COMMUNICATION FROM REVEREND ED ROFFE

It is my sincere and considered opinion that the use of the term "indiscriminate" is quite unjustified in reference to the admittedly regrettable but apparently necessary bombing that has occurred in Laos.

My opinion as expressed above should be evaluated in the light of the following facts:

A. I am a Canadian and, consequently, am under no obligation to support or justify the policies of the Government of the United States as they affect Laos either politically or militarily. The opinion I offer is given in complete honesty and with no sense of the compulsion that might prompt me, were my status other than that of a genuine neutral.

B. I arrived in north Laos in early 1929 to become, as far as I know, the first person from the western hemisphere to establish residence in Laos. This has given me an inevitable knowledge of and sympathy for the people of this land to whom I would be traitor were I indifferent to the present undeniable distress.

While the fact of the distress, and the fact of the bombing which has, in part, contributed to the distress, are undeniable, it should be obvious that a true interpretation of these facts cannot be formed following a mere overnight visit, a stay of two or three days, or a fleeting contact with a relatively limited number of the many peoples of Laos: ethnic Lao, minority groups, refugees or others, even an approximately accurate evaluation of surface facts would presuppose an in-depth acquaintance with the hopes, the fears, the aspirations and the attitudes of these peoples. In view of the severe restrictions laid on them by considerations of time, to say nothing of the very real barrier of language such an acquaintance cannot possi-

bly be acquired by visiting dignitaries, no matter how well-intentioned they might be.

Not infrequently, such rapid investigations have simply served to confirm pre-established opinions with all the evidence contrary to such opinions apparently being conveniently filtered out. This makes for irresponsible reporting. Whereas the situation calls for an unbiased approach and an equally unbiased analysis of the facts that are gathered for evaluation.

Let me cite a single example. One group of refugees (from the Plain of Jars) was accurately reported to have stated that they left their villages because of the bombing. That statement, in isolation, would seem unequivocally to condemn the bombing. But responsible reporting should take into consideration the context of such a statement. This would require asking "what prompted the bombing?" And the simple answer would be that the presence and the activity of enemy forces in the area required drastic measures, in part to make it possible to get planes in there in order to evacuate the innocent civilian population.

The refugees stated that they left because of the bombing and that meant, at the very least, that they left because the bombing eventually made it possible for them to leave. They pointed out—and this was completely overlooked in subsequent reporting—that their loyalties, their sympathies, their ties were all with the royal government of Laos and they were happy to be able to rejoin those of "like precious faith." The bombing made it possible for them to flee an area which was under a repressive political regime, where religion was suppressed, and where they were subject to enforced labor etc.

If these people have any serious complaint it surely is not that they and their villages were bombed, but rather that unfriendly forces imposed harsh conditions on them without warrant. The bombing was a direct result of the unjustified presence and completely unwelcome practices of these intruders.

These last few paragraphs are not a diversion from the main question. On the contrary, I believe they are undoubtedly germane to it and I would be gratified if what I have herein presented serves to correct some of the misinterpretation of facts that is current in the United States and to thereby remove some of the misunderstanding that derives from such misinterpretation.

EXHIBIT D

STATEMENTS FROM AIR FORCE OFFICERS, JULY 7, 1971

Brig. Gen. Daniel "Chappie" James, Jr., Vice Commander, 8th TFW, who flew over Loas in 1966 and 1967:

"I know I didn't indiscriminately bomb civilians, I know my pilots didn't—I stake my professional reputation on it.

"What we were interested in was the interdiction of supplies. We had no interest in villages. You could end your career quicker than any other way by putting ordnance where it shouldn't go.

"We were not taking pictures of villages. We were taking pictures of LOCs and routes. The population centers and villages were in the highland above the LOCs.

"I remember the village of Sam Neua. This was a headquarters area for the Pathet Lao which we were forbidden to hit in 1966. We were forbidden from hitting it even when we received fire from the village. I never got shot at so much in my life as at Sam Neua, yet I couldn't bomb it."

Col. Lloyd R. Leavitt, Vice Commander, 8th TFW; Ubon AFB; Wing Commander, 432d TRW, Udorn AFB, who flew over Laos from April 1970 to April 1971:

"I don't recall one instance where my wing attacked a village.

"We never made attacks against non-military targets."

Lt. Col. Dale Fulton, Assistant Air Attache, Vientiane, 1967–69:

"I personally know many refugees. They all say that they were driven out and would rather live with the Lao than the North Vietnamese and Pathet Lao."

Col. Earl Brown, Chief, Strike Operations, 432d TRW; flew interdiction missions out of Udorn AFB from August 1969 to April 1970; majority of his missions were flown in the Barrel Roll area and the Plain de Jars; also did one tour in 1965 and flew over Laos;

"Control of missions was greater in 1969 than in 1965. We had Tacan and radar coverage of missions, as well as an airborne command controller and a forward air controller (FAC). In 1965, under tight rules of engagement, we did not strike villages. In 1969, with much tighter means of control, there was even less possibility of striking villages."

Col. Daryle Tripp, Deputy Commander, Operations, 56th Special Operations Wing, Nakhon, Phanom, Thailand; at NKP Base all of 1969:

"In the dry season of May 1969 the Pathet Lao were moving southwest and overran the village of Moung Souai, which was a primary airfield in the western PDJ. We were called upon to provide close support in May 1969, to cover the extraction of a thousand or so refugees. After evacuation of the refugees, we systematically pounded the airfield as a military objective. The airfield was close by and had the same name as the village, but we did not hit the village.

"We never used CBU phosphorus ordnance against a non-military target."

Lt. Col. Charles Bishop, Squad. Operations Officer, 354th TFS, Takhei; F–105 pilot, 1966, 1967, 1969, and 1970; flew 94 interdiction and close-air-support missions over Laos:

"We rarely ever dropped a bomb that wasn't on a FAC's smoke. We did not bomb villages."

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. GUBSER. I yield to the gentleman.

Mr. KEMP. Mr. Speaker, I would like to commend the gentleman for his remarks and for presenting in this debate some important questions and answers, not only to those of us in the House but to our fellow countrymen and to the young people of America.

I agree with the gentleman that it is time to stand up—to stand up for our country, not in the sense that America is perfect—but to stand up for our country in regard to the high goals that it has always attempted to pursue. The United States has certainly made mistakes, but I would like to stand up with you at this moment and answer, not as eloquently as you have expressed it—but to answer the accusation that this country is waging war against Laos and South Vietnam.

The fact that this accusation has been made in this body concerns me not only as a freshman Congressman, but as an American.

Our country has been accused of waging war by the gentleman from California and others against the people of Laos and against the people of South Vietnam—that is false—and my colleagues—who have made that accusation know that it is false. Both the legitimate government and the people of Laos are fighting for their lives against external North Vietnamese aggression—so are the people of South Vietnam. They have asked for America's help and welcome American assistance. In fact, they have asked for more.

Further, the Government of Laos fully approves of what the United States is doing in that country and they are asking for our assistance because they know that the one existing threat to their national existence and their freedom as well as that of South Vietnam comes from the North Vietnamese.

It does not come from America—10,000 miles away. It comes from the North Vietnamese who are their historic enemy and who have thousands of ground troops occupying Laotian neutral territory as well as South Vietnamese territory and is attempting to overthrow their government.

The truth is that everyone in Southeast Asia wants peace, everyone except the North Vietnamese—every nation in Southeast Asia is defending its homeland—except the North Vietnamese.

Laos has asked for American military assistance.

Cambodia has asked for American military assistance.

The South Vietnamese Government has asked for American military assistance.

That is why it is being given.

No one, I would suggest to my colleagues, has asked for North Vietnamese troops to come into their country, and because those North Vietnamese troops are there in violation of every international rule as well as the 1954 and 1962 Geneva accords, because they are there on wars of aggression, that is why fighting continues in Southeast Asia.

I would suggest to my colleagues that American pilots are not fighting for conquest. They are fighting to prevent it, just as they did in Korea where they also fought to prevent conquest and save freedom from Communist aggression.

Mr. Speaker, at this point I include the following extraneous matter to support in depth the position I previously articulated, and in defense of our present policy.

Mr. Speaker, no one is trying to force North Vietnam to submit to anything—we are trying to prevent them from forcing South Vietnam to submit to a communism they do not want; that is what this war is all about. No one is trying to overthrow Hanoi's government—they are trying to overthrow the Laotian Government, Cambodian Government, the South Vietnamese Government. It is not the Laotians, Cambodians, and South Vietnamese who are sending massive invasion armies into the North—the armies of invasion are coming out of the North into the South. Submission is what the North is after—free and open elections, free from submission, is what America is fighting for—and you know that as well as I.

AUTHORITY ON THE WAR

Some say that the President is waging an illegal war because the Gulf of Tonkin Resolution has been repealed—that there is no constitutionality for what he is doing.

When the President took office there were 550,000 Americans in Vietnam; when that Gulf of Tonkin Resolution was repealed there were still hundreds of thousands of Americans in Vietnam. The President is bringing them out on his timetable—and congressional approval for that is inherent in the fact that Congress continues to vote him every single dollar he needs to do so. If Congress

wants all American activity halted in Southeast Asia—let Congress cut off all funds for Southeast Asia—but Congress has refused to do that—it has been giving the President the dollars he needs, and in giving the dollars, they are giving him their approval in the most meaningful way that approval can possibly be given. That is where the President continues to get his authority.

UNCLE HO, THE PATRIOT

Ho Chi Minh has been described as a great national patriot and hero, trying to bring all his people under single rule. But in that sense Adolph Hitler was a great German patriot and hero, for he, too, tried to bring all the German people in Austria, in Czechoslovakia, in Poland, and the Rhineland—under Berlin's domination.

But we judge people not just on their nationalism—Ho was a nationalist and Hitler was a nationalist. But on their objectives—Nazism in one case and Communism in the other—and on their means—atrocity and aggression in both cases. What Hitler did to the Jews is precisely what Ho would have done to the Catholics had they not fled into the South by the hundreds of thousands. As it was, thousands died in Uncle Ho's agrarian reform—after his victory over the French. And while the Communist revolutionaries are in power in Hanoi, what happened to the anti-Communist Vietnamese revolutionaries who fought against the French?

THE UNITED NATIONS IN KOREA

In the Korean war at times there were orders to shoot anyone in civilian clothes found wandering around at night.

We may remember the anti-guerrilla-operation effort that was tagged Operation Ratkiller in those less euphemistic times.

In the Korean war, nearly 2 million civilian casualties were recorded. God only knows how many Koreans, North and South, were made homeless. The point is, that in any war, there are refugees and in modern wars, they are inevitable.

But to suggest that America in this war, or in that Korean war, deliberately sought to create those refugees is false and malicious.

Let me add another point. It is indicated that America has used more bombs in Southwest Asia than in all the Second World War. To me this is proof itself that America is deliberately avoiding civilian targets—taking special precautions to avoid wounding or injuring the innocent. In one attack American and British bombers killed hundreds of thousands of Germans in Dresden, in the great fire raid. It is a testament to the fact that we are fighting a limited war, that we have deliberately held back from such bombing against Hanoi and Haiphong—that we have not destroyed the dikes in North Vietnam, as we did not destroy the dams in North Korea.

DECEPTION

The five times the President has pledged to bring home thousands of American troops, these troops have come home. When he went into Cambodia he told the American people he would be out in 60 days, he was out in 60 days. He told the American people he had a plan to end American involvement in this war—and that is precisely what he has accomplished. Since he took office, 300,000 American troops have been removed from the Vietnam war.

CORRUPT GOVERNMENT ARGUMENT

The United States is fighting to keep in power a corrupt regime of Thieu-Ky which is no better than Hanoi's, which shuts down newspapers and locks up political prisoners.

Abraham Lincoln imposed censorship on American papers in the Civil War; this is no argument. In Great Britain in World War II, there was a suspension of elections. What we are dealing with here is a nation without democratic traditions that has developed these decisions even during a war against both internal and external aggression.

Yes, papers have been censored in the south; but in the north, there is no free press whatsoever. In the south, there is freedom of religion for Catholics and Buddhists alike. In the north there is no freedom of religion. In the south, there are village elections, there are provincial elections, there are presidential elections. President Thieu was elected over eight other candidates in the only free national election ever held in that part of the world. By the way, who elected Pham Van Dong? In the south, there are many opposition parties; in the north there is none.

Nine hundred thousand refugees fled from the rule of Ho Chi Minh when he took power in 1954—you find thousands who have fled south—how many Vietnamese have fled into Communist country—even their own prisoners of war are too terrified to return home. That is the worst indictment of a regime I have ever seen. Can you imagine all but five of the American prisoners refusing repatriation if they had the chance.

REFUGEES

Eighty percent of all bombing in Laos is done against the Ho Chi Minh Trail, where no one lives—and where the only casualties are enemy troops and engineers who are moving supplies to kill American men.

Even Mr. Harriman will concede that in Laos, the war there is one of aggression by the North Vietnamese who violated the Geneva accords the day they signed it.

All American air support is being done not to wage war against Laos, but to wage war against those committing aggression against Laos, against Cambodia, against South Vietnam, and against the remaining American troops in Southeast Asia.

Eighty-five percent of the enemy troops in Laos are North Vietnamese—if there were no Communist ground forces rampaging through northern Laos, and using southern Laos as an avenue of aggression—there would be no American planes overflying the country. Mr. Speaker, instead of making demand after demand on the American Government, attack after attack on the American President—I am pleased Congressman GUBSER devoted his special order to the people really responsible for this war and its continuation—the aggressors in Hanoi.

What of the 20 percent of the bombs used in northern Laos—where the only American in danger of being killed is a CIA agent.

First, the main targets in the north are roadway and storage areas—they are not villages. These are hill people; and their villages are on the hillsides; and the American attacks are directed against road targets.

Second, there is a standing rule that American bombers without explicit permission do not bomb within 500 yards of any individual village.

Third, some say that most of the villagers left in 1968 and 1969—yet Mr. Nixon was not even President in 1968, and in 1969 until July 12—2 years ago—Mr. Godley did not become the Ambassador. Mr. Sullivan was.

Fourth, I include the testimony of Mr. Sullivan himself on American policy at this point:

SULLIVAN'S TESTIMONY

In this long, unhappy history of North Vietnamese aggression against Laos from 1962 until the present time, over seven hundred thousand residents of Laos have been displaced at least once, and at some time or other, have been on the refugee rolls. There are currently approximately 309 thousand residents of Laos who receive refugee assistance of one sort or another. Of these 309,000 people, 120,000 are the families of Lao Government forces (most of whom are Meo), 169,000 come from friendly areas from which they were pushed westward by the North Vietnamese, and 20,000 come from areas controlled by the North Vietnamese and Pathet Lao.

It is therefore very clear that the prime cause of these refugee movements to the west has been the constant military pressure of the North Vietnamese. By an examination of the numbers of refugees listed on the rolls at any one time it can be seen that there is a very close correlation between military activity and the generation of refugees . . . the correlation between displacement and North Vietnamese military activity will be clear.

There has been much concern expressed about the exact causes for refugee movements. In some instances the cause is clear and quite simple; the North Vietnamese, not trusting the civilian population, drive them out ahead of their forces rather than attempting to capture and control them. This has been particularly true of the Meo population north and east of the Plaine des Jarres. In other instances the civilian population themselves, having experienced or knowing the reputation of life under the North Vietnamese and the Pathet Lao, have chosen to flee rather than submit to that sort of regime. In still other instances the constant pressure and menace of warfare have caused the people to move from their homes and accept refugee status. And finally, in a small number of cases, the Lao Government has moved the civilian population as a result of its own decision, in order to remove them from the path of battle.

I believe I should say something about the role which air attacks have played in this whole tragic picture. It has been suggested that air attacks have been the primary cause of refugee movement, or even that air attacks have been deliberately mounted in order to create refugee movement and to deprive the North Vietnamese and the Pathet Lao of human resources represented by the refugees. It has, for example, been suggested that, as a result of the cessation of United States bomb-

ing over North Vietnam in November, 1968, a vast increase of air power was applied to northern Laos and resulted in the increase of refugee movements in that part of the country.

The facts do not bear this out. There was a significant shift of United States air power from North Vietnam to Laos after the cessation of bombing in November, 1968. However, this shift was almost exclusively to the area of the Ho Chi Minh Trail where sortie rates were very significantly and sharply increased immediately after the cessation in North Vietnam. As I have indicated previously, there is no Lao population along the Ho Chi Minh Trail and therefore this augmentation of sorties in that area had no relationship to the generation of refugees. As a matter of fact in North Laos the sortie level continued almost exactly as it was from November 1968 through February and early March of 1969. It was only in late March of 1969 and subsequently through the military campaigns which rolled over the Plaine des Jarres from then until early 1970 that there was an augmentation of air activity in northern Laos. This air activity was directly associated with the ground operations that had erupted on the Plaine des Jarres. As I previously indicated, this lengthy struggle for the Plaine des Jarres which eventually resulted in its control by the North Vietnamese, resulted in the westward movement of some 17,000 people out of the total of approximately 150,000 people who were forced to move westward during that North Vietnamese offensive in the same period. These 17,000 were unfortunately caught up in the very center of major military activity, both ground and air. This sort of fighting was an unusual exception to the normal pattern of military activity which has prevailed over the past several years in the north of Laos.

The normal activity in northern Laos, as I have earlier indicated, consists largely of small units sparring for control of logistics routes and terrain features. The function of air activity in this type of warfare has been quite specialized. The greatest number of United States air sorties on a daily basis in north Laos have been flown on route reconnaissance and interdiction missions. They have expended their ordnance either against moving vehicles on the roads or against choke points and known military storage areas. Because these roads run in the valleys away from hill settlements, the greatest proportion of these sorties do not impinge upon areas of civilian population.

Similarly, in the south along the Ho Chi Minh Trail where the greatest proportion of United States daily sorties are flown, there are no inhabited areas in the zone of operations.

In normal circumstances there are only a few United States aircraft a day that operate in areas of Laos where there is a danger of impinging upon inhabited locations. Whenever there is a request, from whatever source, for sorties of this type, they are carefully examined in advance by the Embassy in Vientiane, and the strike has to be personally approved by the Ambassador. These rules of engagement, which are designed to protect the civilian population, have been in effect since 1965 and, with respect to this safety feature, have not been altered.

I go into this detail, not because I am trying to suggest that no civilian casualties have ever resulted from United States air operations, but in an effort to demonstrate the care that is taken to minimize the effect of United States air operations upon civilians. It is true that certain civilians have been caught up in military operations in which United States air power was a component part. We have 17,000 refugees from the fighting in the Plaine des Jarres in 1969 and 1970 as testimony to that fact. They are, however, a decidedly exceptional group in the overall total of 700,000 refugees who have moved westward in the face of North Vietnamese pressure over the past ten years.

Fifth. Only a handful—16 at most—of the refugees were interviewed from a single area where battles had raged back and forth—and from this some extrapolated war crime against the American Air Force—there is nothing to back those outrageous charges.

Sixth. The gentleman from California (Mr. WALDIE) indicated that the refugee camps he saw were remarkably well run; and that casualties and fatalities seemed at a minimum—why did some see fit to ignore this bit of evidence.

CIVIL WAR ARGUMENT

One of the repeated arguments is that the war in Vietnam is a civil war like the American Civil War, that "in both conflicts the South broke away and the North fought to reunite a country that essentially belongs to them."

COUNTER ARGUMENTS

First. The difference between the two is basically this. In our Civil War, one of the goals of the North was to put an end to the slavery of 3 million black Americans. In the Vietnamese civil war, the North is attempting to impose political slavery upon 17 million people who have fought 10 years to prevent it.

Second. If the Communist North has a right to reunite the country under Hanoi's domination—then Saigon has the same right to reunite the country under non-Communist rule. Mr. Speaker, would you agree to that?

Third. If Hanoi has the right to use force to unite the nation under Hanoi's rule—then, Saigon has the right to use military force to defend itself.

Fourth. If Hanoi is right in using force to bring the South under Communist control—then North Korea had the right to use force to bring South Korea under Communist rule. The American military force was sent to South Korea to prevent precisely that unification under militant Communist rule. What some are condemning in 1971 is the same thing they and hundreds of thousands of Americans fought to prevent in 1951—the aggression of an Asian Communist power, against an Asian people that wants no part of communism.

Fifth. Hanoi has no more right to use force to bring the people of South Vietnam under its power than does East Germany have a right to use military force to bring West Germany under its power.

HAVE WE A RIGHT TO HIT A NEUTRAL COUNTRY

North Africa was neutral in World War II—we invaded there. Occupied France was neutral; we invaded there. Belgium declared its neutrality. We invaded there.

There is no obligation in international law for American troops to sit in their bunkers as clay pigeons while enemy units prepare an assault from privileged sanctuary—and after such assault, return to their immune provinces. We did not attack Cambodia—we attacked enemy forces, illegally occupying Cambodian terrain as staging areas for attacks on American men. Nothing in international law requires Americans or South Vietnamese to grant privileged sanctuary to enemy forces surrounding it and attacking it from three frontiers.

TWO FINAL POINTS

Sure war is hell. We knew that a century ago. But far fewer have died in the bombing in Asia, than in the last war. Mr. Speaker, we will recall the British fire-bombing of the city of Dresden which killed 200,000 Germans in a matter of days if not hours. Nothing like that has been attributed to the Americans in Vietnam. The cities of Hanoi and Haiphong have not been destroyed. Enormous tonnage has been dropped—but millions have not died, because the Americans are not deliberately killing civilians; they have sought to reduce civilian casualties to the minimum. And for all the horrors of war, we know there is something worse, and that is the loss of freedom—perhaps forever; and that is why the South Vietnamese are fighting on; and that is why we are helping them. When some say, it is not worth it—they mean the freedom of the people of South Vietnam, of Cambodia, of Laos, is not worth it—maybe, they would rather make that decision themselves. And they have made it with their courage.

With charges that the American diplomats in Laos—who cannot defend themselves here—have all lied and deceived us and the American people. With allegations of war crimes to American officers in Vietnam. With charges of deception, and warmongering for political purposes by a President who has helped bring a cease fire to the Middle East, opened the door to China, initiated SALT negotiations with the Russians, brought half our men home—and cut our casualties by almost 90 percent—I think those who are critical as Presidential candidates are guilty of demagoguery and it is becoming apparent to the American public.

Mr. GUBSER. I thank the gentleman for his contribution.

Before my time expires, I would like to point out that I think, due to a confusion of circumstances, which were not planned, and which are unfortunate, the gentleman from California (Mr. MCCLOSKEY) has been denied a fair opportunity to reply, and, the realistics of time being what they are, there will not be an adequate opportunity.

I would say to the gentleman that if he cares to take a special order on another day, I certainly will be here. I shall not take one myself, but I will be here to allow him to make his rebuttal. I think it is only fair that he be allowed that.

Let me say also that I have no intention of embarking upon a continuing feud with the gentleman from California. That is not my purpose. He has the right to his views about American policy. He has an obligation to present them. But I say that when I believe that, whether it was intentional or unintentional, the image of this great Nation has been unfairly besmirched, then I, as an American, have the obligation to rise in protest, and I shall continue to do this as long as I live. But I have no intention of embarking upon a personal feud with the gentleman from California.

Mr. McCLOSKEY. Mr. Speaker, will the gentleman yield?

Mr. GUBSER. I yield to the gentleman from California.

Mr. McCLOSKEY. The gentleman has

referred to the Air Force strikes and the destruction they have caused. I was impressed with the statement that every bit of information that is available to the gentleman is available also to me. Both the gentleman and I know that there are hundreds of thousands of photographs of every area of northern Laos where bombings have taken place. Will the gentleman join me in requesting the U.S. Air Force for permission to look at the photographs taken before and after the bombing and Air Force strikes that we have discussed?

Mr. GUBSER. I would suggest to the gentleman that he carefully read my remarks when they appear tomorrow in the CONGRESSIONAL RECORD. I have stated six succinct reasons why the photographs the gentleman seeks are probably not available, but if available, they would not prove a thing.

Going back to the gentleman's expressed surprise at the fact that nothing is available to me as a member of the Armed Services Committee which is not available also to him, I would say, as a member of the Armed Services Committee for 14 years, it has consistently been the policy of that committee that all Members of Congress should have access to the same material available to us. All you need to do is to ask.

Mr. McCLOSKEY. Thank you. Will the gentleman also concede that with reference to villages that have been destroyed by white phosphorus, napalm, or cluster bombing, no bombing figures would appear in reference to villages that are struck by those weapons?

Mr. GUBSER. Of course, the gentleman should have told the House that, almost without exception, phosphorus is used only in the 2.75 marking round for the purpose of marking targets for bomb strikes. It is used by forward air controllers for marking purposes and also used for screening purposes to screen a downed American pilot so that we could get in and rescue him.

This is not to say that there are not two types of phosphorus cluster bombs. But it is to say that the only times they have ever been used have been those times when they were used against military targets such as rice storage, POL and other military supplies. They have not been used against villages; they have not been used against population centers or people. One of the Air Force officers whom I will quote in exhibit D has said:

> We never used CBU phosphorus ordnance against a nonmilitary target.

The SPEAKER pro tempore. The time of the gentleman from California has expired.

Mr. DENNIS. Mr. Speaker, I ask unanimous consent that the gentleman may have 5 additional minutes.

The SPEAKER pro tempore. The time of the gentleman has expired. He has consumed 1 hour, and under the Rules of the House, the time cannot be extended.

CONTEMPT CITATION OF CBS AND DR. FRANK STANTON—"THE SELLING OF THE PENTAGON"

The SPEAKER. Under a previous order of the House, the gentleman from North Carolina (Mr. BROYHILL) is recognized for 60 minutes.

Mr. BROYHILL of North Carolina. Mr. Speaker, early this year the Columbia Broadcasting System broadcast over its network and over licensees affiliated with that network, an hour long program entitled "Selling of the Pentagon." Admittedly this was a controversial program and immediately, of course, there was a great deal of uproar around the Nation in disagreement with the conclusions that were presented in this broadcast.

There were charges made that there was poor editing of this program, and subsequently the Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee began an investigation of the techniques used in putting this program together. As a part of this investigation, the Subcommittee of the House Interstate and Foreign Commerce Committee issued a subpena asking for all the films and work prints, outtakes, sound recordings, and so forth, from this program, and the Columbia Broadcasting System refused to comply with this subpena. The committee continued to vigorously press its investigation, held hearings, listened to various witnesses, and gathered an enormous amount of material on this particular program.

This last week, on July 1, the House Interstate and Foreign Commerce Committee, by a vote of 25 to 13, voted in favor of a resolution which, of course, if upheld by the House of Representatives, would mean that the Columbia Broadcasting System and its president, Dr. Frank Stanton, would be held in contempt of Congress for refusing to furnish this information used in compiling this news documentary.

The information I have is that tomorrow this House is going to be called on to vote on this matter—whether CBS and its chief executive officer should be cited for contempt of Congress for its refusal to furnish this material.

I and 12 other members of the committee oppose this contempt citation because we feel very strongly that the House of Representatives should not take this action. We feel that the approval of the contempt citation would have drastic implications in abridging the freedom of the press guaranteed by the first amendment.

Speaking personally, I think it is a dangerous precedent, and I hope Members are going to keep an open mind. We are not going to have an opportunity for a long debate, but I hope Members will read the material we put in the RECORD today and look at this whole issue in a clear frame of mind.

I feel there are some first amendment arguments here. The first amendment of our Bill of Rights guarantees the right of a free press to speak out against the Government and it guards against any governmental action that would in any way induce censorship. To my way of thinking, this right has been a pillar of our democratic society and system for nearly 200 years.

I have been as critical as any Member of this Congress of some of the practices of the television networks in reporting the news, and I share some of the observations of Vice President Agnew that the news media in many instances present an inaccurate and distorted picture of our Nation, but it seems very clear to me that the step the committee took goes far beyond expressing criticism of this type.

In fact, the action that our committee was taking verges on the regulation by government, on the regulation by committee of the Congress, on how the news shall be reported. This action, in my opinion, establishes a very dangerous precedent by setting up the Congress as a review board for the editorial judgment of newsmen. So I, as one member of the committee, could not take this step.

I hope the House of Representatives is going to exercise better judgment and reverse the action of the committee.

Mr. Speaker, I would like to bring to the attention of the House the position taken by the Federal Communications Commission on the matter under discussion.

In March of this year, Chairman STAGGERS sent a letter to the Commission asking what action it would take in view of the allegations that the editing of "The Selling of the Pentagon" had caused misrepresentation of the views of Government officials.

In a letter of April 28, 1971, the Commission responded to the chairman and concluded that action by the Commission would be inappropriate in this case. The Commission states:

> We conclude that further action by this Commission would be inappropriate—and not because the issues involved are insubstantial. Precisely to the contrary, they are so substantial that they reach to the bedrock principles upon which our free and democratic society is founded.

The FCC also states that it is both unwise and impossible for the Commission to establish some precise line of factual accuracy for broadcasters to follow. This would, the Commission points out, be inconsistent with the first amendment and would involve the Commission deeply and improperly in the journalistic functions of broadcasters.

The Commission does urge that allegations of distortion of the news be referred to broadcast licensees for their own investigation and handling and states that the licensees investigation of complaints should be thorough, conscientious, and resulting in remedial action where appropriate.

I would like to make this communication from the FCC to the Interstate and Foreign Commerce Committee a part of the RECORD at this point.

The letter is as follows:

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., April 28, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of March 9, 1971, in which you register a complaint concerning the CBS news documentary, "The Selling of the Pentagon." You ask "what action the Commission will take" in light of allegations by Assistant Secretary of Defense Daniel Z. Henkin that his answers to questions posed by CBS newsman Roger Mudd had been so edited and rearranged as to misrepresent

their content, and that a statement was attributed to a Marine colonel "when, in fact, the officer was reading a quotation of the Pr'me Minister of Laos." You also enclose a letter to Dr. Frank Stanton, President of CBS, asking for comment on Mr. Henkin's allegations and on techniques of editing whereby "through the editing process, answers to questions may easily be curtailed or rearranged . . . and [made] to appear to have been given in response to different questions." Similar inquiries and complaints were also received from Chairman Hébert of the House Armed Services Committee, from other members of the Congress, and from the public.

Taken together, two principal questions have thus been raised: (1) whether CBS adhered to the requirements of the fairness doctrine to afford reasonable opportunity for the presentation of contrasting viewpoints on issues of public importance covered in the program; and (2) whether CBS slanted or deliberately distorted its presentation of persons interviewed on the program. As to (1), we note that CBS presented an hour-long news special on April 18 for the stated purpose of affording an opportunity for the presentation of contrasting viewpoints on the issues of substance raised in the original program. The Commission, however, is still requesting the comments of CBS as to whether it has complied with the requirements of the fairness doctrine in this matter. A copy of the letter is attached. In this Statement, therefore, the Commission will address question (2) above.

THE FACTUAL RECORD

On February 23 and again on March 23, in the documentary at issue, the CBS network stated that Department of Defense would spend $30 million this year in "public relations funds not merely to inform but to convince and persuade the public on vital issues of war and peace."

The original broadcast aroused controversy as inquiries and complaints to this Commission have attested. As a consequence, following the March 23 rebroadcast, CBS ran a series of edited film clips of critical comments derived from previous addresses and interviews by Vice President Agnew, Secretary Laird, and Chairman Hébert, plus a rebuttal by Mr. Richard Salant, President of CBS News.

The controversy has focused on two aspects of "The Selling of the Pentagon" in particular, and the essential facts are not really in dispute. One concerns a film-clip from an address delivered by Colonel MacNeil at a symposium held in Peoria, Illinois,[1] featuring presentations by what CBS described as "the traveling colonels" (military and civilian spokesmen supplied, on request, to local civic and professional organizations). As far as the viewer could tell—and neither Colonel MacNeil nor CBS made it clear—the speaker seems to be affirming the "domino theory" as applied to Southeast Asian nations under Communist pressure, although as the printed transcript shows he was in fact quoting the Prime Minister of Laos to this effect. Later in the course of his remarks, Col. MacNeil did return to the "domino theory" and he did affirm it in virtually the same words as the Laotian Prime Minister. As Mr. Salant observed in his March 23 rebuttal, it was "difficult to tell where Souvanna Phouma left off and the Colonel started."

The other aspect of principal controversy concerns an interview betwen Mr. Henkin and Mr. Mudd. In it, some portions of Mr. Henkin's answers were cut; and what appeared as answers to particular questions were in fact rearranged from answers to quite different questions. What follows is a detailed analysis of the interview as shown on the program, compared with the verbatim transcript of the original interview:

This is what the viewers of the CBS documentary were shown as a single exchange:

ROGER MUDD. What about your public displays of military equipment at state fairs and shopping centers? What purpose does that serve?

Mr. HENKIN. Well, I think it serves the purpose of informing the public about their armed forces. I believe the American public has the right to request information about the armed forces, to have speakers come before them, to ask questions, and to understand the need for our armed forces, why we ask for the funds that we do ask for, how we spend these funds, what we are doing about such problems as drugs—and we do have a drug problem in the armed forces, what we are doing about the racial problem—and we do have a racial problem. I think the public has a valid right to ask us these questions.

This, on the other hand, is how Mr. Henkin actually answered the question cited above:

Mr. HENKIN. Well, I think it serves the purpose of informing the public about their armed forces. [*This is the only sentence that was retained intact in the answer as broadcast.*] It also has the ancillary benefit, I would hope, of stimulating interest in recruiting as we move or try to move to zero draft calls and increased reliance on volunteers for our armed forces. I think it is very important that the American youth have an opportunity to learn about the armed forces. [*Both the latter sentences were dropped entirely.*]

The answer Mr. Henkin was shown to be giving had in fact been transposed from his answer to another and later question that dealt not only with military displays but also with the availability of military speakers. At that later point in the interview, Mr. Mudd asked Mr. Henkin whether such things as drug and racial problems constituted "the sort of information that gets passed out at state fairs by sergeants who are standing next to rockets."

Mr. Henkin replied as follows:

Mr. HENKIN. No, I didn't—wouldn't limit that to sergeants standing next to any kind of exhibits. I knew—I thought we were discussing speeches and all.

But this is how the sequence was shown over the air:

Mr. MUDD. Well, is that the sort of information about the drug problem you have and the racial problem you have and the budget problems you have—is that the sort of information that gets passed out at state fairs by sergeants who are standing next to rockets?

Mr. HENKIN. No. I wouldn't limit that to sergeants standing next to any kind of exhibits. Now, there are those who contend that this is propaganda. I do not agree with this.

The second sentence of Mr. Henkin's actual answer—the part about "speeches and all"—had been omitted. And the "new" material—about propaganda came from an earlier point in the interview and was in fact a reference to charges that the Pentagon was using talk of an "increasing Soviet threat" as propaganda to influence the size of the military budget.[2]

POLICY CONSIDERATIONS AND CONCLUSIONS

In view of all the facts at our disposal, we conclude that further action by this Commission would be inappropriate—and not because the issues involved are insubstantial. Precisely to the contrary, they are so substantial that they reach to the bedrock principles upon which our free and democratic society is founded. Our basis for this conclusion is set forth in prior Commission rulings, of which two are particularly apposite: *In re Complaints Concerning CBS Program, Hunger In America*, 20 FCC 2d 143 (1969), and *Network Coverage of the Democratic National Convention*, 16 FCC 2d 650 (1969).

Lacking extrinsic evidence or documents that on their face reflect deliberate distortion, we believe that this government licensing agency cannot properly intervene. It would be unwise and probably impossible for the Commission to lay down some precise line of factual accuracy—dependent always on journalistic judgment—across which broadcasters must not stray. As we stated in the *Hunger in America* ruling, "the Commission is not the national arbiter of the truth" (20 FCC 2d at p. 151). Any presumption on our part would be inconsistent with the First Amendment and with the profound national commitment to the principle that debate on public issues should be "uninhibited, robust, [and] wide-open" (*New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270). It would involve the Commission deeply and improperly in the journalistic functions of broadcasters.

This function necessarily involves selection and editorial judgment. And, in the absence of extrinsic evidence, documentary or otherwise, that a licensee has engaged in deliberate distortion, for the Commission to review this editing process would be to enter an impenetrable thicket. On every single question of judgment, and each complaint that might be registered, the Commission would have to decide whether the editing had involved deliberate distortion. Although we can conceive of situations where the documentary evidence of deliberate distortion would be sufficiently strong to require an inquiry—e.g., where a "yes" answer to one question was used to replace a "no" answer to an entirely different question—we believe that such a situation is not presented here.

We are not saying that CBS' or any other broadcaster's editorial judgment is above criticism. As we said in *Hunger in America* (20 FCC 2d at p. 151), allegations of distortion "should be referred to the licensee for its own investigation and appropriate handling." And again:

. . . We stress that the licensee must have a policy of requiring honesty of its news staff and must take reasonable precautions to see that news is fairly handled. The licensee's investigation of substantial complaints . . . must be a thorough, conscientious one, resulting in remedial action where appropriate.

Our point is that this licensing agency cannot and should not dictate the particular response to thousands of journalistic circumstances. Above all, we affirm that we must ". . . eschew the censor's role, including efforts to establish news distortion in situations where government intervention would constitute a worse danger than the possible rigging itself." But to say that such intervention would be a remedy far worse than the disease is *not* to say that we can

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[1] CBS, in its documentary, stated that the Defense Department's participation in the symposium "was arranged by Peoria's Caterpillar Tractor Company, which did 39 million dollars of business last year with the Defense Department." The Defense Department has stated, however, that the event was arranged and sponsored by the Peoria Association of Commerce with a Caterpillar employee serving as chairman of the symposium.

[2] An inquiry has been made concerning a third aspect of "The Selling of the Pentagon" in connection with edited coverage of a news briefing of Pentagon reporters by Deputy Assistant Secretary of Defense Jerry Friedheim. The facts are that CBS recorded the entire session, with answers to approximately 34 questions; only six questions and answers were shown in the documentary and, of these six, three answers were of the "no comment" type—the *only* such answers Mr. Friedheim gave during the entire briefing. Mr. Henkin asserts that answers to any of the "no comment questions" would have "revealed classified national security information." Coverage of the briefing followed comments by Mr. Mudd to the effect that Mr. Friedheim, as a "careful and respected adversary" of the Pentagon reporters, does not "tell all he knows" and "wouldn't have his job long if he did."

afford to shrug off the deeper questions involved.

This Commission is charged with ". . . promoting the public interest in the larger and more effective use of radio" (Section 303(g) of the Communications Act). Surely there is no issue bearing more heavily on the public service role of broadcasting than the integrity of the licensee's news operation.

We have allocated so much spectrum space to broadcasting precisely because of the contribution it can make to an informed public. Thus it follows inevitably that broadcasting must discharge that function responsibly, without deliberate distortion or slanting. The nation depends on broadcasting, and increasingly on television, *fairly* to illumine the news.

We particularly urge the need for good faith, earnest self-examination. In our view, broadcast journalists should demonstrate a positive inclination to respond to serious criticism. Indeed, Mr. Chairman, the thrust of your and other congressional inquiries—reflected also in criticism in print media—was to raise questions about the editing process, particularly with respect to the Henkin interview.

It seems to us that CBS has failed to address the question raised as to splicing answers to a variety of questions as a way of creating a new "answer" to a single question. The very use of a "Question and Answer" format would seem to encourage the viewer to believe that a particular answer follows directly from the question preceding. Surely important issues are involved here, ones that every broadcast journalist should ponder most seriously.

What we urge—because we believe it will markedly serve the public interest—is an open, eager and self-critical attitude on the part of broadcast journalists. We urge them (as we did in *Hunger in America,* cited above) to examine their own processes, to subject them to the kind of hard critical analysis that is characteristic of the best traditions of the journalistic profession.

Our objective is to encourage broadcast journalism, not to hurt or hinder it. We have made clear in the past that the Commission seeks a larger role for broadcast journalism, including newscasts and documentaries. We reiterate that commitment today. For what ultimately is at stake in this entire matter is broadcasting's own reputation for probity and reliability, and thus its claim to public confidence.

In view of the foregoing discussion, we do not propose to inquire of CBS as to the second issue referred to on p. 2, *supra.* A copy of this letter will be sent to CBS so that it is informed fully of the Commission's position in this important area. We shall, of course, also keep you informed of any further developments as to the application of the fairness doctrine.

This letter was adopted by the Commission on April 28, 1971.

Commissioners Burch, Chairman, and Johnson issuing separate statements.

By direction of the Commission,
DEAN BURCH, *Chairman.*

Mr. Speaker, in a subsequent letter to Chairman STAGGERS, dated June 21, 1971, the FCC documents that there was no failure on the part of CBS to comply with the fairness doctrine in "The Selling of the Pentagon" case.

The fairness doctrine, of course, provides that time shall be provided for the airing of all sides of controversial issues of public importance. In a letter to the FCC dated May 17, CBS provides detailed evidence that it has complied with the fairness doctrine in this case and cites programs and times when opposing views were aired.

I insert these two letters—one from CBS to the FCC, the other from the FCC to the Interstate and Foreign Commerce Committee—in the RECORD at this point:

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C., June 21, 1971.

Hon. HARLEY O. STAGGERS,
Chairman, Special Subcommittee on Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your letter of March 9, 1971, and related correspondence regarding the CBS documentary "The Selling of the Pentagon." In our letter to you dated April 28, 1971, we stated that we would keep you informed on any further developments as to the application of the fairness doctrine to the issues presented during the program. In this connection, we are enclosing a copy of CBS's response to our April 28 inquiry.

CBS asserts that the issue raised by the documentary centered on "Defense Department public information activities." It has listed eight programs, including the documentary itself, in which proponents of the Defense Department's public information program expressed their views. The network further states that proponents of the Defense Department's program discussed several different aspects of the program, including its necessity and value, the budget of the program, the films produced by the Defense Department, the appropriateness of military officers speaking on matters of foreign policy, military displays, and civilian tours of military installations. CBS also states that an invitation to Assistant Secretary of Defense Daniel Henkin to appear on FACE THE NATION remains outstanding.

As you know, under the fairness doctrine the licensee may exercise judgment in selecting the formats to be employed and the persons he believes to be responsible representatives of the various contrasting views. The Commission will review the licensee's actions only to determine whether they appear to have been reasonable and made in good faith.

On the basis of the showing made in the CBS letter, the network appears to have afforded reasonable opportunity for the presentation of significant contrasting views on the issues involved in the program, and we cannot conclude that CBS has failed to comply with the requirements of the fairness doctrine.

This letter was adopted by the Commission on June 16, 1971.

Commissioners Robert E. Lee and H. Rex Lee absent.

By direction of the Commission,
DEAN BURCH, *Chairman.*

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N.Y., May 17, 1971.

Hon. BEN F. WAPLE,
Secretary, Federal Communications Commission, Washington, D.C.

DEAR MR. WAPLE: This is in response to your letter of April 29, 1971, in which you request our comments on whether we "have fulfilled or plan in the near future to fulfill" our fairness doctrine obligations in our coverage of the controversial issues of public importance discussed on CBS REPORTS: "The Selling of the Pentagon," which was broadcast on February 23, 1971 and rebroadcast on March 23, 1971 on the CBS Television Network. With that letter you enclosed a copy of the Commission's letter, also dated April 28, 1971, to the Honorable Harley O. Staggers, Chairman of the Special Subcommittee on Investigations of the House Committee on Interstate and Foreign Commerce, which set forth the scope of the instant inquiry and noted the Commission's concerns regarding governmental intrusion into questions of editorial judgment. We believe that the restraint exercised by the Commission in this matter is particularly appropriate and is, in fact, essential to the continued existence of robust and independent broadcast journalism.

With independence, of course, goes the responsibility both to invite and consider honest criticism and to continually seek ways to improve our performance. As we stated in our letter of April 30, 1971 to Chairman Staggers and reaffirm here, "[w]hile the First Amendment bars governmental surveillance of the press, it is essential that the press itself review its own performance and that journalists continually engage in self-analysis and criticism and encourage, from multiple sources, such criticism, evaluation and analysis by their professional colleagues."

In addition, there is the responsibility to provide opportunity in our overall schedule for the presentation of differing views on controversial issues of public importance in appropriate formats chosen by the broadcaster. As the Commission has said in a basic document dealing with this responsibility:

"The fairness doctrine deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the 'equal opportunities' requirement. Rather, the licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. . . . In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith."—*Fairness Primer* 29 Fed. Reg. 10416 (1964).

We believe that CBS has fully satisfied its fairness responsibilities with respect to the issues raised by "The Selling of the Pentagon." That broadcast involved a critical examination of the scope, methods and appropriateness of the Defense Department's public information activities. In requesting our comments you note that the Commission has received fairness complaints regarding the broadcast, and while you do not detail these complaints we assume that these complaints contend that CBS has not afforded sufficient opportunity for the presentation of views of those supporting these Defense Department public information activities. CBS has provided extensive coverage of the issues discussed in this documentary broadcast, including significant opportunity to those who were critical of the broadcast's treatment of the substantive issues presented.

For the Commission's information, we set forth at this point some of the significant coverage of the issue beginning with the original broadcast:

February 23, 1971: CBS Reports. "The Selling of the Pentagon." Since much of the controversy surrounding the broadcast was at most peripherally concerned with the substantive issue discussed therein, it is worth specifically noting that the broadcast presented viewpoints favorable to the Pentagon's public information program, including those of Defense Department spokesmen and the following participants in a Joint Civilian Orientation Conference: Drs. Richard Chamberlain and Olav Sola, Messrs. David Connor, Robert Greenhill and Richard Dover.

March 4, 1971: CBS Morning News with John Hart. In a lengthy interview, Congressman F. Edward Hébert, Chairman of the House Armed Services Committee, outlined his positions on a number of matters discussed on "The Selling of the Pentagon," including the firepower demonstration depicted in the broadcast, his bimonthly television program, the army recruitment program, the

Defense Department's public relations budget and a general defense of the Pentagon's public information program.

March 9, 1971: CBS Morning News with John Hart. The broadcast included filmed excerpts of the press conferences of Vice President Agnew in New Orleans, including favorable comment on Representative Hébert's views and a general defense of the Pentagon's public information program.

March 16, 1971: CBS Morning News with John Hart. The broadcast included an extended interview with Secretary of Defense Laird, a portion of which concerned the issues raised in the broadcast, including discussion of Secretary Laird's review of the Defense Department's public relations activities.

March 19, 1971: CBS Morning News with John Hart. The broadcast included a lengthy excerpt from Vice President Agnew's speech in Boston concerning "The Selling of the Pentagon," the thrust of which was that CBS inappropriately "sought to indict the Department of Defense for misinformation, distortion and the alleged staging of events."

March 19, 1971: CBS Evening News with Walter Cronkite. The broadcast included excerpts from press conferences of Senator Dole and Vice President Agnew, stating generally their view that CBS hard news and documentaries, including "The Selling of the Pentagon," lacked objectivity.

March 23, 1971: Rebroadcast of "The Selling of the Pentagon."

March 23, 1871: The Selling of the Pentagon, "A Postscript." This fifteen minute broadcast, immediately following the rebroadcast noted above, included excerpts from previous statements of Rep. Hébert, Vice President Agnew and Secretary Laird and a statement by Richard S. Salant, President of CBS News. The appearances by the spokesmen in defense of the Pentagon public relations activities were representative of their views as voiced in their previous appearances noted above and some of the same excerpts were used.

Because of the importance of the substantive issues raised by "The Selling of the Pentagon," CBS determined that it would be most appropriate to present a further in-depth discussion of these issues during which varying viewpoints could be expressed. Accordingly, CBS presented, from 10:00–11:00 p.m., EST on April 18, 1971, a broadcast entitled CBS NEWS SPECIAL REPORT: "Perspective: The Selling of the Pentagon."—In connection with this discussion broadcast CBS extended invitations to the following persons who, however, did not accept: Vice President Agnew; Senators Dole, Dominick, Goldwater, Jackson, Stennis, Symington, and Tower; Admiral Arthur Radford; General Maxwell Taylor and Assistant Secretary of Defense for Public Affairs Daniel Henkin.

Appearing on that broadcast were Mr. Arthur Sylvester, Assistant Secretary of Defense for Public Affairs in the Kennedy and Johnson administrations, and Brigadier General (Ret.) S. L. A. Marshall, a syndicated columnist and author of numerous books on military history, as well as two critics of the Defense Department public information program, Senator William Fulbright and Mr. Adam Yarmolinsky, former Special Assistant to Secretary of Defense Robert McNamara. The subjects discussed on that broadcast included the necessity for and value of the public information program, the budget of the program, the films produced by the Defense Department, the appropriateness of military officers speaking on matters of foreign policy, military displays and civilian tours of military installations.

Since the issue involved is quite obviously one which is likely to continue to be of interest, further coverage of the varying points of view may be anticipated. For example, it is still hoped that Assistant Secretary Henkin, who declined to appear as the major interview guest on the CBS MORNING NEWS WITH JOHN HART on the morning after the broadcast to discuss the issues raised in that broadcast, will accept his continuing invitation to appear on FACE THE NATION.

We believe that CBS has acted responsibly and fairly in presenting in its overall schedule diverse viewpoints on the controversial issues of public importance covered in "The Selling of the Pentagon."

Respectfully submitted,

ROBERT V. EVANS.

Mr. Speaker, I believe the Members, if they have the time in the morning, should review a legal brief provided by the attorneys for the Columbia Broadcasting System—the firm of Wilmer, Cutler & Pickering, here in Washington, D.C.—which I include at this point in the RECORD.

The brief is as follows:

WILMER, CUTLER & PICKERING,
Washington, D.C., June 15, 1971.

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N.Y.

DEAR SIRS: You have asked for our opinion as to whether Columbia Broadcasting System, Inc. (CBS) is obligated to comply with the subpoena issued on May 26 by the Special Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee, relating to its investigation of "The Selling of the Pentagon."

The May 26 subpoena calls for the personal appearance of Frank Stanton, President of CBS, for the purpose of giving testimony. Like the withdrawn subpoena of April 7 that it replaces, it also commands the production of "film, workprints, outtakes, sound-tape recordings, written scripts and/or transcripts utilized" in connection with "The Selling of the Pentagon." Unlike the withdrawn subpoena, the new subpoena is "limited to all such materials relating to the actual broadcast and [does] not include such materials relating to segments not shown. . . ."

We have reached the following conclusions:

(1) Since our opinion letter of April 27, 1971, a new decision of the Supreme Court has made even more clear the proposition that broadcasters are protected by the First Amendment, for all relevant purposes, in the same way that other forms of journalism are protected.

(2) The Subcommittee's press release of May 25 and the letter accompanying the subpoena of May 26 show no alteration of the Subcommittee's fundamental assertion of the power to investigate, through compelled process, how CBS news personnel edited "The Selling of the Pentagon," as an aid in its formulation of legislation regulating editing practices and edited broadcasts.

(3) Although slightly narrower in scope than the April 7 subpoena, the new subpoena has an unconstitutional chilling effect upon the exercise of First Amendment rights.

Accordingly, we have reached the same conclusions concerning the new subpoena as those set forth in our opinion of April 27, 1971, a copy of which is attached for your convenience. In our opinion, the subpoena is in conflict with the First Amendment. As a result, CBS is under no legal obligation to supply the materials demanded, and Dr. Stanton is under no legal obligation to answer questions designed to obtain the information the Subcommittee seeks pursuant to its stated goals.

We shall discuss, first, the significance of the June 7, 1971 Supreme Court decision in *Rosenbloom* v. *Metromedia, Inc.*, 39 U.S.L.W. 4694 (June 7, 1971), which reenforces our view that in all relevant respects the First Amendment is applicable to broadcast journalism. We shall then discuss our reasons for concluding that the Subcommittee's changes in the scope of the subpoena, and its newly advanced arguments in support of its demands, do not alter the unconstitutional chilling effect that would be created were CBS compelled to comply.

I. THE ROSENBLOOM DECISION AND THE FIRST AMENDMENT RIGHTS OF BROADCASTERS

In *Rosenbloom*, the issue facing the Supreme Court was whether the rule of *New York Times Co.* v. *Sullivan* [1]—prohibiting libel recoveries for comment about public figures in the absence of a showing of actual malice or knowing disregard of the truth—should be applied when a radio station broadcast information about an individual, not himself a public figure, involved in an event of public or general interest. The Court upheld a lower court decision denying the right to recover, on the ground that the *New York Times* rule governed.

Rosenbloom is the first Supreme Court case directly involving the applicability of the *New York Times* rule to utterances of a news broadcaster on a station licensed by the Federal Communications Commission. Although the members of the Court were divided over the application of the *New York Times* rule to a libel action in which the plaintiff is not a public figure, all of the Justices clearly believed that for all relevant purposes First Amendment rights fully apply to federally licensed broadcasters.

Mr. Justice Brennan, announcing the judgment of the Court, noted that the "petitioner does not question that the First Amendment guarantees of freedom of speech and freedom of the press apply to . . . newscasts." 39 U.S.L.W. at 4695 n. 3. And he announced the holding as being that "a libel action, as here, by a private individual against a *licensed radio station* for a defamatory falsehood in a newscast relating to his involvement in an event of public or general concern may be sustained only upon clear and convincing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard of whether it was false or not." (Emphasis supplied.) *Id.*, at 4702.

This holding was the culmination of an analysis that emphasized the importance of the *New York Times* rule as a means for assuring "breathing space" for journalistic exercise of First Amendment rights and for preventing unwarranted governmental actions threatening to chill those rights.

In a concurring opinion, Mr. Justice White stated that "*New York Times* gives the *broadcasting media* and the press the right not only to censure and criticize officials but also to praise them and the concomitant right to censure and criticize their adversaries," and that "the First Amendment gives the press *and the broadcast media* a privilege to report and comment upon the official actions of public servants in full detail . . ." 39 U.S.L.W. at 4705. (Emphasis supplied.) Mr. Justice Black, in another concurring opinion, stated his familiar position that libel judgments "against the news media" are unconstitutional "even when statements are *broadcast* with knowledge they are false." *Id.*, at 4703. (Emphasis supplied.) And Mr. Justice Harlan's dissent indicated that he sees no difference between "publishers" and 'broadcasters" and would treat them in the same way under the First Amendment, subjecting both to a libel standard of reasonable care. *Id.*, at 4708.

Thus, four of the five opinions, speaking for a clear majority of six Justices,[2] expressly treated news broadcasts as identical to newspapers. And it may fairly be concluded that every Justice believed that the First Amendment guarantees broadcasters the same protection against chilling effects on the gathering or reporting of news that it guarantees to any other journalistic medium.[3]

As our opinion letter of April 27 indicates, numerous courts (including on many occasions the Supreme Court) have stated prior to *Rosenbloom* that there is no difference, for any relevant purpose, between broadcast-

Footnotes at end of article.

ers and other media of the press. The Supreme Court's decision in *Red Lion Broadcasting Co.* v. *F.C.C.* 395 U.S. 367 (1969) was thought by some to cast these earlier statements in doubt. But the *Rosenbloom* decision makes crystal clear that *Red Lion* cannot be read as depriving broadcasters of "the freedom of the press" with respect to what they broadcast in the first instance, or as a ruling entitling the Government to regulate broadcasters in a manner that chills this freedom. *Red Lion* holds only that the need to license broadcasters permits reasonable government regulation of what broadcasters must present as a *consequence* of what they broadcast in the first instance, in order to ensure "fairness" in the discussion of controversial issues.[4] The Court in *Red Lion* itself expressly stated that the case would be different if the rules under review had affected what broadcasters reported in the first instance. 395 U.S. at 396. *Rosenbloom* is that different case, and holds that the First Amendment is fully applicable.

If libelous comment broadcast about public affairs cannot be subjected to official penalties, non-libelous comment must certainly deserve an even more protected status. Legislation that is designed to deter "distortions" or to control "editing practices" in broadcast news reports, by imposing sanctions for or regulations upon comment about public events that falls short of malicious libel, could not withstand constitutional scrutiny.

II. THE CHILLING EFFECT OF THE SUBPOENA FOR TESTIMONY AND DOCUMENTS

Whether or not the Subcommittee can devise constitutional legislation regulating the manner in which broadcasters must edit the news, the Subcommittee cannot, in our opinion, enforce the present subpoena in aid of that objective.

As *Rosenbloom* makes clear, the First Amendment protects broadcasters and other forms of press media against actions intended to have or likely to result in a chilling effect upon the exercise of their First Amendment rights. Our letter of April 27 outlines the chilling effect upon news reports about public events that the Subcommittee's prior subpoena threatened to cause. The chilling effect of being required by compulsory Congressional subpoena to disclose the complete details of the editing process is obviously far greater than the chilling effect of a court judgment for damages—the government action held constitutional, absent malicious libel, in *Rosenbloom*. The chill is greater because the awesome powers of Congress transcend the limited powers of the private litigant, and all journalists will be inhibited by the threat imposed by legislative surveillance and its potential consequences.[5] The only question that remains, therefore, is whether our previous conclusion remains applicable in light of the slight narrowing of the scope of the subpoena and the Subcommittee's new arguments in support of it.

Our examination of the scope of the modified subpoena leads us to conclude that while there has been a reduction in the volume of documents called for, there has been no substantive change as to the nature of the documents that the Subcommittee seeks. The new subpoena continues to call for the same documents—"film, workprints, outtakes, sound-tape recordings, written scripts and/or transcripts utilized" in connection with the preparation of "The Selling of the Pentagon"—that were called for in the first subpoena. All that the Subcommittee has done is to make clear that the new subpoena does not reach materials segments of which were not actually broadcast.

As a constitutional matter, we can perceive no difference between the first subpoena, calling for all non-broadcast materials, and the second, calling only for those non-broadcast materials from which the editors of the broadcast selected portions that were broadcast. The Subcommittee is still insisting on its right to examine the editing decisions involved in selecting materials for the final broadcast, and on its right to judge those decisions according to its own concept of what a proper or correct editing decision should have been—in other words, according to a governmental standard of journalistic truth.

To demand that CBS supply unedited material so that the government can review its editing judgments would have an unconstitutionally chilling effect upon the First Amendment rights of CBS and all other broadcast journalists, and ultimately upon the public's right to see and hear vigorous and critical comments on public affairs. Nor is there any constitutional difference between compelling the production of documents and compelling oral testimony designed to elicit the same information contained in the documents, since the same chilling effect results.

In support of its subpoena, the Subcommittee now appears to be making two additional arguments: first, that, although reporters' notes cannot be reached by subpoena, "filmed outtakes" can be reached, since they "pertain to actual events" and "are not private thoughts"; and second, that there is no chilling effect here because the Subcommittee is not seeking to breach the confidentiality of news sources.

As to the first point, a filmed account of actual events is the result of a series of individual journalistic judgments about what to film, when to film, what to emphasize and what to ignore. Journalists almost always record more than they eventually report; the process of selection and organization is what gives shape and point to the final product. Outtakes are thus as individualistic as the "private thoughts and impressions written by a reporter," and if produced would be equally revealing as to the editing process that creates the published report. And a filmed interview is constitutionally indistinguishable from an interview in which a newspaper reporter makes his own notes or employs a recording device.

As to the second point, the chilling effect upon a journalist's ability to retain confidential news sources is not the only type of unconstitutional "chill" arising from a subpoena of this kind. Any governmental effort to invade the independence of the news gathering and editing process can have an equally chilling effect. As the Ninth Circuit Court of Appeals recognized in *Caldwell* v. *United States*, 434 F. 2d 1081, 1086 (1970) (*cert. granted*):

"The very concept of a free press requires that the news media be accorded a measure of autonomy; that they should be free to pursue their own investigations to their own ends without fear of governmental interference. . . ."

"Further it is not unreasonable to expect journalists everywhere to temper their reporting so as to reduce the probability that they will be required to submit to interrogation. The First Amendment guards against governmental action that induces such self-censorship."

As *Caldwell* expressly recognizes, the reporters' knowledge that their work product is subject to governmental scrutiny and second-guessing will cause them to be timid in performing their news-gathering and news-reporting role. In our opinion, the First Amendment was designed to protect the press and the public from precisely this type of governmental supervision—particularly over the reporting of news about the government itself.

WILMER, CUTLER & PICKERING.

FOOTNOTES

[1] 376 U.S. 254 (1964).

[2] Mr. Justice Douglas did not participate in the decision of this case, but Mr. Justice White indicated his belief that Mr. Justice Douglas would have voted with Mr. Justice Black. *Id.*, at 4704.

[3] The remaining opinion of Mr. Justice Marshall (Mr. Justice Stewart concurring), did not address specifically the question of whether the facts in *Rosenbloom* raised any different First Amendment issues because the report had been broadcast rather than published in the printed press. However, in a case marking a major extension of the *New York Times* rule, which produced sharp disagreement among members of the Court as to what the appropriate limits of that rule for journalists should be, if these Justices believed that different First Amendment standards apply to broadcasters than to print journalists, they would undoubtedly have explicitly set forth such a belief.

[4] In *Rosenbloom*, Mr. Justice Brennan's opinion raises questions even as to whether the decisive element in *Red Lion* was indeed the scarcity of broadcast frequencies. For he suggested that states could adopt a right of reply requirement to ensure "that private citizens will . . . be able to respond adequately to publicity involving them," and that institutionalizing a right of reply is constitutionally preferable to permitting libel damage recoveries. 39 U.S.L.W. at 4700. It had previously been thought by some that rights of reply could only be applied against broadcasters, pursuant to *Red Lion*, but Mr. Justice Brennan's statement suggests that *Red Lion* may ultimately be viewed, not as an example of special treatment of broadcasters under the First Amendment, but as a ruling that in some circumstances a right of reply is consistent with the First Amendment for *all* segments of the press.

[5] The United States Court of Appeals for the District of Columbia Circuit very recently recognized the potential for chilling broadcast journalists in the exercise of their First Amendment rights through the power of the Federal Communications Commission (and therefore Congress) over the broadcast license. The Court stated:

"The suggestion that the possibility of nonrenewal, however remote, might chill uninhibited, robust and wide-open speech cannot be taken lightly. But the Commission, of course, may not penalize exercise of First Amendment rights." *Citizens Communications Center* v. *FCC*, No. 24,471, June 11, 1971, slip op., p. 27.

Mr. Speaker, at the request of my colleague the gentleman from New York (Mr. REID), I include for the RECORD at this point a letter and an attachment.

The letter and attachment are as follows:

CONGRESS OF THE UNITED STATES,
Washington, D.C., July 8, 1971.

DEAR COLLEAGUE: As of possible interest, I am enclosing comments by the President and others relating to the contempt citation against CBS President Frank Stanton, which will reach the Floor next week.

Basically there seems to me to be two issues, even before the First Amendment question is reached. One, is there any need to subpoena the outtakes of the program "The Selling of the Pentagon," since a complete transcript of the interview with Assistant Secretary of Defense Daniel Henkin, which is alleged to have been improperly edited, is printed in the Congressional Record of March 8? Second, does the subpoena relate to a clear legislative objective which is not covered by existing legislation or achieved by such FCC regulations as the Fairness Doctrine? It is my understanding that CBS presented critical remarks about "The Selling of the Pentagon" by Vice President Agnew, Secretary Laird, and Chairman Hébert in a special program. This would seem to me fully to satisfy the requirements of the Fairness Doctrine.

While there are those who believe that the contempt citation should be opposed for the above reasons alone, I am concerned that there is a serious First Amendment question

as well. Certainly an attempt to subpoena outtakes and sound recordings is the equivalent of the subpoenaing of a reporter's notes, the marked copy of a newspaper, or, indeed, material cut on the stone in a composing room. This, in my judgment, is an intrusion into both editing and reporting, functions that are clearly protected by the First Amendment.

While radio and television are not mentioned in the First Amendment because they were not then invented, I believe that the same protections which apply to the print media also apply to the broadcast media. As was noted by the Third Circuit Court of Appeals in *Rosenbloom v. Metromedia, Inc.*, a decision affirmed by the Supreme Court last month:

". . . (N)o rational distinction can be made between radio and television on the one hand and the press on the other in affording the Constitutional protection contemplated by the First Amendment."

Accordingly, I hope you will vote against the contempt citation.

With warm regard.

Sincerely yours,

OGDEN R. REID.

COMMENT RELATING TO CBS SUBPENA

President Richard M. Nixon: "But as far as the subpenaing of notes are concerned, a reporter's, as far as bringing any pressure on the networks as the government is concerned, I do not support that." News Conference, San Clemente, California, May 1, 1971.

FCC Chairman Dean Burch: "In view of all the facts at our disposal, we conclude that further action by this Commission would be inappropriate—and not because the issues involved are insubstantial. Precisely to the contrary, they are so substantial that they reach to the bedrock principles upon which our free and democratic society is founded."

"As we stated in the *Hunger in America* ruling, 'the Commission is not the national arbiter of the truth' (20 FCC 2d at p. 151). Any presumption on our part would be inconsistent with the First Amendment and with the profound national commitment to the principle that debate on public issues should be 'uninhibited, robust, and wide-open' (*New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270). It would involve the Commission deeply and improperly in the journalistic functions of broadcasters." Letter to Hon. Harley O. Staggers concerning the CBS News documentary "The Selling of the Pentagon," April 28, 1971.

White House Communications Director Herbert Klein: "I believe this is wrong and an infringement on freedom of the press. It could lead to further subpenas of a reporter's notes." As quoted in an AP dispatch carried in the *Washington Post* of May 27, 1971, and referring to the Congressional investigation of the CBS News documentary "The Selling of the Pentagon."

Communications Act (47 U.S.C. 326): "Censorship. Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

Mr. Speaker, I also have editorials from the Washington Post, the Evening Star, and the Washington Daily News, and a letter to the editor addressed to the editor of the Charlotte Observer, Charlotte, N.C., which I include for the RECORD at this point.

The information is as follows:

[From the Washington Post, Apr. 11, 1971]

F.Y.I.

We had not planned on carrying much further the discussion triggered by that CBS television program, "The Selling of the Pentagon"—almost everybody having had their say, and then some, including ourselves, the networks and a good many congressmen who seem to have enjoyed this aspect of the whole affair as much as they disliked the original program. But the action of Rep. Harley O. Staggers in summoning CBS officials to appear before his committee is so unwarranted and so substantial a threat to the news media of this country that we are obliged to come back to the subject once again.

Mr. Staggers, in his role as chairman of the investigating arm of the House Commerce Committee, has ordered CBS to turn over to that committee not only a film and a transcript of the program itself but also just about everything CBS collected in the process of preparing the program. He wants all the preliminary film, recordings and transcripts used by CBS in getting ready for the program, as well as the names, addresses and fees paid to anyone, other than government officials and regular CBS staff members, who appeared on the program. Apparently in an attempt to demonstrate that his committee is doing more than just reflecting the anger of the Pentagon and Congress over this one program, Mr. Staggers has had a similar order served on NBC in connection with a documentary on the balance of nature.

Frank Stanton, president of CBS, has said that he will provide the committee with a film copy and a written transcript of the program as it appeared on the air and nothing else. We applaud his decision and trust he will stick by it, come what may. CBS deserves to be judged by what it put on the air, not on what it collected and discarded along the way. (Like many others, we have made a judgment about "The Selling of the Pentagon" on that basis. To refresh your memory, we think the program made a substantial contribution in airing an aspect of the Pentagon that sorely needs airing but we thought some of the editing techniques used were open to serious question, mostly because they exposed the show to needless attack. It is remarkable how both defenders and critics of the program have seized on that second point and ignored the first.)

In essence, what Mr. Staggers now wants to do is to sit in judgment, not of the program, but of how CBS operates as a collector and disseminator of information. That, to put it bluntly, is none of his or Congress's business. It is, if we may use an analogy, like demanding that the author of a book produce all his rough drafts, his interview notes, and his correspondence. Or, it is like demanding that the President turn over to Congress all the memos he receives from various government agencies concerning a proposed speech and all the early drafts of that speech. No congressman, we submit, would be so reckless as to propose either. And any congressman who did would be recognized immediately as one who had no respect for and no understanding of the First Amendment or the internal operations of a large organization.

The demand of Mr. Staggers, of course, is founded on the idea that television is somehow so different from the rest of the information media that the Constitution no longer applies. Since the granting of television licenses is a legitimate function of government, the argument goes, the policing of what appears on television is similarly legitimate. No doubt the government can place restricting limits on certain aspects of television; it does on other news media in terms of the laws concerning such matters as libel, obscenity, theft, extortion or business regulations. But government has no general role to play in policing the gathering and presentation of news material, as such, except to guarantee access for competing points of view on a medium, like television, where physical limitations exist.

It is not difficult to imagine the chilling effects on public affairs programing if the the course which Mr. Staggers has suggested is followed. It would mean that any television newsman who said anything critical about any governmental official could be called on the carpet to explain how he reached that conclusion. The freedom that has marked the television appearances of such diverse figures as William Buckley and the late Edward R. Murrow would be seriously curtailed. Indeed, the final stop on the road down which Mr. Staggers has embarked is complete governmental control of the content of television news and public affairs programs. While that may be the ideal situation for those who think the government always knows best, it is entirely incompatible with a society in which the government is responsive to the people of the country. Perhaps it would be timely to remind Mr. Staggers and any of his colleagues of like mind and inclination of the words of James Madison on the meaning of freedom for the news media in our system:

"Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. And can the wisdom of this policy be doubted by any who reflect that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity over error and oppression . . ."

[From the Washington Post, June 29, 1971]

CBS VERSUS CONGRESSMAN STAGGERS

Chairman Harley Staggers of the House Committee on Interstate and Foreign Commerce has asked Dr. Frank Stanton, president of the Columbia Broadcasting System, to do something which would not enrich the committee and which would leave CBS poor indeed. He is asking the network to bow the head and bend the knee to official authority in a way which would rob it of all status as an independent element of a free press. Dr. Stanton, fortunately, sees the issue with complete clarity; and so he has refused to comply with a subpoena directing him to submit to the committee all the film, script and recordings that contributed to a controversial TV documentary produced by CBS last winter, "The Selling of the Pentagon."

Any official, compulsory inquiry into the preparation of a program inescapably diminishes the independence of the medium subjected to it; and, in consequence, it diminishes the usefulness, the effectiveness of that medium. "There can be no doubt in anyone's mind that the First Amendment would bar this subpoena if directed at the editing of a newspaper report, a book or a magazine," Dr. Stanton said. Any editor ought to feel a compelling obligation to resist such a subpoena.

It can be argued that broadcasters are less entitled to First Amendment protections than editors of printed material because television stations are licensed by the government in the public interest and may have their licenses revoked if they fail to serve that interest. But this is essentially a foolish argument; for while the Federal Communications Commission must weigh the quality of a broadcaster's performance in granting a license renewal, it must also recognize that independence is the *sine qua non* of that broadcaster's ability to serve the public interest. Fearful broadcasts would be useless broadcasters.

A year ago Congressman Ottinger and Senator McIntyre, with numerous co-sponsors, introduced legislation which would drastically limit the subpoenaing of reporters, as such, from any of the media. It refers specifically to radio and television and would forbid all such subpoenas, whether issued by a grand jury, a court, an agency or department of the federal government or Congress except under

very limited circumstances. Until that kind of protection is provided by law or by a more enlightened understanding of First Amendment principles, broadcasters must assert and defend their independence as Dr. Stanton is doing. They will serve the public best by doing so indomitably.

[From the Washington Post, July 11, 1971]

THE SELLING OF A CONTEMPT CITATION

"Make no mistake. We have clear evidence of deceit—men's words electronically altered to change their very meaning."

"The Subcommittee is seeking information about practices which could, and were designed to, mislead TV viewers into believing they are viewing reality when in fact they are viewing a fiction created by a film editor."

"The art of cutting and pasting TV film is now so sophisticated that a sentence may be cut in half, qualifying words removed and the sentence put together without the least indication that this occurred. This is truly the 'newspeak' of 1984; the age of Big Brother is already upon us."

The quotations come, as you will have guessed, from Congressman Harley O. Staggers and his Commerce Committee Investigations Subcommittee by way of justifying their harassment of CBS News in connection with the filmed documentary, "The Selling of the Pentagon." Mr. Staggers and twenty-five of his colleagues on the full Commerce Committee have already voted to cite CBS President Frank Stanton for contempt of Congress because Mr. Stanton, quite correctly and courageously, refused to honor a subpoena of material that had not been used on the CBS show. Now the question is whether Mr. Staggers and his supporters will be able to persuade a majority of the House to go along with them in their wholly illogical and perilous leap from criticism of particular aspects of a particular program to interference with the network's most fundamental, constitutionally protected rights.

It is not exactly a secret that some of the features of the documentary which Mr. Staggers professes to find so outrageous were the subject of sharp criticism in this space a few months back. That does anything but endear to us his current, misguided campaign to make them the basis—the excuse, in fact—for this abuse of governmental power. Nor do we find the alarm that he and his colleagues have expressed particularly convincing. Go back and read those quotations we have cited. Now recall that a contempt citation, if it comes, will come from those same wonderful people who—on a daily basis—bring you the Congressional (so-called) Record, that most altered, revised, rearranged, cut-and-pasted version of "reality" that exists among public documents. We will go further. Perhaps you won't believe it, but in the Congressional Record *sentences may be cut in half, qualifying words removed and the sentence put together without the least indicated that this occurred.* Members of Congress, in fact, remake their remarks in such a way as to *mislead the public into believing that they are reading what really happened, when they actually are often reading a fiction created not by a film editor but an anxious, second thought-laden congressman.* Make no mistake, as Mr. Staggers might put it—and has, in fact—*we have clear evidence of deceit—men's words altered to change their very meaning.* A student or a reporter could indeed do worse, if this thing passes, than to research the editing techniques of some of those legislators who at present profess to be so disturbed about the dubious authenticity of events and views being presented to the public as a real life version of what happened.

Who is for the pursuit of this contempt citation or of this campaign to wrest from CBS material that government has no business demanding? Mr. Nixon has spoken against it ("as far as the subpoenaing of notes is concerned, of reporters, as far as bringing any pressure on the networks, as a government is concerned, I do not support that"). So has Mr. Nixon's Director of Communications, Herbert Klein. So too has Assistant Secretary of Defense Daniel Z. Henkin, whose rearranged words on the CBS documentary were one source of complaint against it. The problem is that Mr. Staggers is apparently making some headway in the House—working assiduously to invoke support on the floor in his capacity as a committee chairman.

We think it is time for some of those who oppose this dangerous effort and who have lapsed into silence to speak out. And we think, too, that the vote this week will be something of a test of the skill and strength of the new House Democratic leadership. Speaker Albert may be the key man. We hope and trust he will make the necessary moves to turn this vindictive campaign around.

[From the Evening Star, Apr. 15, 1971]

FREEDOM OF THE AIR

The Columbia Broadcasting System deserves unqualified support in resisting the attempt by a House subcommittee to subpoena film and other materials that were *not* used in the finished version of the documentary, "The Selling of the Pentagon." The action of Representative Staggers' Commerce subcommittee on investigations can only be regarded as a blunt assault on the constitutional freedom of a news organization—a threat to impose chilling government surveillance over the preparation of television news.

The CBS decision to fight—up to the Supreme Court if necessary—is in the face of the broadcasters' uncertain legal position. The medium's newsmen claim the First Amendment's protection of press freedom, and they should have it. But the stations that serve as their vehicle operate under federal license and a maze of regulations. Newspapers can battle for their rights (and for the public's interest in honest and unintimidated journalism) without looking over their shoulders at a frowning and politically conscious Federal Communications Commission.

In the "Pentagon" case, the basic constitutional issue surmounts the ambiguities of the broadcasters' legal status. The FCC's fairness doctrine is intact; critics of the controversial documentary, which pictured the military establishment using the taxpayers' money lavishly to propagandize the taxpayers, were given air time to reply.

As for the congressmen's right to second-guess all the editorial decisions that went into the documentary—that's one we'll bet the Founding Fathers would have laughed out of Independence Hall, as it would be laughed out of any city room. This is an out-and-out case of a journalistic effort causing howls of pain—most audibly from the vice president—and dark thoughts of retaliation in high government circles. The TV documentary had both merits and failings, but in our view that is not the issue.

CBS News in the current dispute must be regarded not as the beneficiary of government licenses but as a journalistic enterprise covered by the First Amendment guarantee. Not that that necessarily would settle all the legal issues without debate. In the case of newspapers—without the licensing complication—the right of governmental bodies to subpoena confidential and otherwise unpublished news materials has been a matter of hot contention for years. Newsmen have gone to jail rather than betray confidences.

The controversy was defused somewhat last year by two wise decisions. Attorney General Mitchell set guidelines to limit the subpoenaing of news materials by federal prosecutors. And a federal appeals court in California, with eloquent concern for the people's "right to be informed," threw out a contempt charge against a reporter who had refused a crippling compromise of his confidential relationship with news sources (in this case, the Black Panthers). A national law establishing the rights of newsmen in such circumstances, as urged here this week by the American Society of Newspaper Editors' Freedom of Information Committee, has our endorsement.

Representative Staggers and his allies perhaps are unaware of the delicate constitutional balances their assault on CBS would tend to upset. It is probable, though, that leveler heads in the Congress—and ultimately, if necessary, in the Judiciary—will prevail.

[From the Evening Star, June 30, 1971]

THE DANGERS IN HARASSING OF TV NETWORKS

(By Carl T. Rowan)

Members of the House Commerce Committee have let their egos overload their logic, so pride apparently is going to drive them to push contempt proceedings against Dr. Frank Stanton, president of the Columbia Broadcasting System.

And that will produce another constitutional confrontation every bit as historic as the great hassle between the newspapers and the government over the Pentagon papers.

Rep. Harley O. Staggers, D-W. Va., chairman of the House committee, wants Stanton held in contempt of Congress because Stanton refuses to give Congress all the films, scripts and recording that contributed to CBS' controversial documentary, "The Selling of the Pentagon."

Stanton would not be forth much as a guardian of the public interest if he did not invite a contempt citation, because what the Congressmen seek to do is contemptible.

They want to establish a precedent under which politicians who don't like a television presentation can call in the producers and their rough film and scripts and try to impugn their motives and judgment in editing the program.

The day isn't coming when an American newspaperman will turn over his notes, or recorded interviews, or photographs and let some congressman or government official second—guess his choice of a lead or quotes to emphasize or photographs to print. The whole country is in trouble if Congress is permitted to single out television for this kind of bullying.

"The Selling of the Pentagon" has won some lofty prizes, but that won't silence the howls of those who, out of vested interests feel compelled to defend anything and everything about the defense establishment.

Can anyone imagine television networks ever doing worthwhile programs on controversial issues if they are always subject to second-guess harassment from bellyaching congressmen who can pass judgment on whether the documentary meets their idea of "fairness"?

No group of politicians ever ought to have that kind of power, and it bespeaks a lofty level of arrogance, or conceit, that Staggers and Rep. William L. Springer, R-Ill., should imagine that the public wants them to exercise such power.

Stanton speaks for the preservation of a free society when he says:

"The chilling effect of both the subpoena and the inquiry itself is plain beyond all question. If newsmen are told that their notes, films and tapes will be subject to compulsory processing so that the government can determine whether the news has been satisfactorily edited, the scope, nature and vigor of their news gathering and reporting activities will inevitably be curtailed."

Staggers counters with the argument that television is so powerful it "sends chills up and down the spine of many men in this country."

Staggers needs to be reminded that the 1st Amendment protections of the press were designed precisely to keep a few chills run-

ning down the spines of those who spend the public's money and do the public's business. Those chills are what keep a lot of public servants honest, including presidents.

If those constitutional protections were justified for the written media 150 years ago, when their power was viewed as awesome, they are justified for television in this frightful new atomic era when a powerful, free press is all the more needed.

Stanton concedes that journalists make mistakes, including mistakes of judgment in editing. Some of the editing techniques used to prepare "The Selling of the Pentagon" are certainly questionable.

Staggers, Springer and other congressmen are within their rights to complain of what they think are errors, to attempt to call the public's wrath down upon an offending station or network. But the Constitution draws the line right there. And heaven help the people if the day ever comes when the politicians are given the bullying powers over this powerful medium that some House members now seek to seize.

[From the Evening Star, July 6, 1971]

THE STAGGERS-STANTON SHOW

Freedom of the press, which cannot for a moment be taken for granted these days, faces another classic test, this time on the floor of the House of Representatives. The members will decide whether to back their Commerce Committee and cite the Columbia Broadcasting System and its president, Frank Stanton, for contempt of Congress.

At issue is the attempt of the committee to subpoena film that was made in the course of producing a CBS News documentary, "The Selling of the Pentagon," but was not used in the finished version. CBS has refused to provide the unused material, seeing the congressional intrusion into its editing process as an attack on its First Amendment right to practice untrammeled journalism.

The television network, in our book, has an overriding constitutional argument that a majority of the House members should uphold, at the cost of rebuffing their committee. The unused film is the equivalent of reporters' notes and other unpublished newspaper materials, which the newspapers have been at pains to protect from governmental seizure. The emergence of government as a newsroom presence—a second-guesser of editorial decisions and an overseer of confidential relationships between newsmen and their sources—would effectively end the independent role of the press as envisioned by the Founding Fathers.

Commerce Committee Chairman Harley Staggers of West Virginia has chosen to overlook the journalistic function of the electronic news medium, to which constitutional protection should apply. He stresses instead the vulnerability of television as a federally regulated industry using the public air waves. The attempt to cast Stanton and CBS outside the pale of the First Amendment is unfair and, more pertinently, unrealistic in the light of the heavy news responsibility that radio and television have assumed in recent decades. It also would be against the interest of the country to transform broadcast journalists into timid, licensed puppets of the government.

It is beside the point whether "The Selling of the Pentagon," which criticized Department of Defense public relations practices, was a perfectly edited documentary. (It was not, and its critics have been outspoken in saying so.) The question is whether it is preferable in a democracy to have an electronic news establishment free to criticize government or beholden to government for its continued existence.

The House should discard the Staggers committee recommendation as an ill-advised adventure in news regulation. That would save the courts from having to pass judgment on the controversy—a judgment that we are confident would uphold CBS.

[From the Evening Star, July 7, 1971]

CBS ACTS TO KEEP THE "HOKEY" OUT

(By Richard Wilson)

Two challenges to unlimited press freedom are running concurrently in Washington. Of the two—publication of top secret Pentagon papers and the CBS documentary on "The Selling of the Pentagon"—the latter may have greater long-range significance.

That conclusion can be reached because the issue over CBS is essentially broader, involving long-smoldering official discontent with the tone, bias and constructive inaccuracies of television news reporting in wide areas.

It is easy to rise in angry breast-beating against such an impudent invasion of the editorial prerogative. But a lot more is involved than abstractions and legal dogma about freedom of the press for a government-licensed medium of mass communication.

The people get into this fight in an intimate way. They sit by the tens of millions at the receiving end of the television tube and have much more vivid ideas on whether or not they are being suckered than when they pursue the "cool" medium of the daily press.

Some observations therefore may be in order:

A late and lamented magazine editor had a word for article ideas which didn't ring true. He called them "hokey"—not actually false, nor precisely a hoax or fake, but "hokeyed up," as he said to convey erroneous or superficial impressions.

This is the problem with "The Selling of the Pentagon." It was not a documentary in the full and complete sense, which in any case would be too long and boring for television, but a patch-up presented from an editorial point of view.

CBS has run into this problem before. It presented films of a war atrocity in Vietnam and in its subsequent effort to justify the accuracy of its coverage had to admit that the perpetrator of the atrocity might have been acting in self-defense.

On another occasion, in attempting to dramatize hunger in America, CBS presented to its viewers a dead baby who died of other causes.

CBS has been challenged by Vice President Spiro T. Agnew, by independent critics, by White House staffers and in committees of Congress for substantive misrepresentations—misrepresentations not so much of actual fact but resulting from innate and sometimes unrecognized bias on the part of producers, reporters and editors.

This is what various agencies of government and the Nixon administration, without too much wisdom, are attempting to bring under control.

A House committee voted to cite CBS and its president for contempt for refusing to submit unused film from "The Selling of the Pentagon." The committee wanted this film to support the contention that the documentary was hokeyed up to conform to the bias of CBS editors and reporters. CBS claimed the protection of the First Amendment on freedom of the press.

The same kind of controversy, incidentally, is going on in Britain.

Nobody in full possession of his senses in government would think of hauling in the New York Times or the Washington Post for their general editorial approach and journalistic techniques. But that is essentially what is being done to CBS.

The issue is confined to the committee's rights to CBS's unused film which, like reporter's notes, is claimed to be protected from public scrutiny. But the larger question is whether or not CBS and the other big networks are whipsawing and distorting public opinion with biased or twisted reports as a consistent practice.

CBS has responded in a way that most newspapers would not by distributing and making public new directives to its staff which heavily underline its policy that the field of CBS News is journalism and not show business.

In a way these directives are a kind of confession because by proscribing what cannot be done any longer it is revealed what can be done, and critics say has been done, to hokey up supposedly authentic news presentations.

These ways are too complex and technical to go into here, but suffice it to say that by splicing up film, using answers out of time sequence with questions, and other devices, editorial opinion can be injected into what is supposed to be an unbiased presentation of fact.

The directives go much farther than that and attempt to standardize the highly personal business of reporting and professional conduct.

The way CBS is handling this very difficult problem now is in contrast to its righteous defiance of a few years ago.

It is extremely difficult to deal with highly intelligent reporters, editors, commentators and cameramen violently seized with commitments to their concept of truth. But CBS is making an attempt to do so, less, it can be surmised, out of deference to Agnew or fear of a contempt citation than to a realization that the public is fed up with hokey stuff. CBS is making progress.

[From the Washington Daily News, May 14, 1971]

STAGGERS AND HIS SUBPENAS

In his command to the Columbia Broadcasting System, Inc. to deliver to a House subcommittee all the "raw material" which was accumulated for a debatable broadcast called "The Selling of the Pentagon," Chairman Harley O. Staggers said:

"I stress that it is not this subcommittee's function to sit in judgment on the viewpoints expressed in television news or documentary programs. We do not have, nor do we seek, authority to curtail the presentation of controversial issues or of unpopular causes of personalities."

If that is the case, why has the Staggers committee issued subpenas for all contracts, disbursements, unused script or tape and about everything else which might have been involved in preparing the broadcast?

The Staggers inquiry obviously is hostile—it is setting out to back up a judgment already reached.

CBS has declined to furnish its raw files. The Staggers committee doesn't need them.

Whatever it thinks of the Pentagon broadcast (we thought the broadcast biased) the committee can make clear without this type of nosy harassment. The broadcast can stand or fall on its merits. It is the finished product which is the issue, not what might have been included or what memoranda CBS may have discarded somewhere as the broadcast was prepared.

If the Staggers committee thinks the broadcast was in error, it can take testimony from Pentagon officials or others to prove it. It can develop its own set of facts and make them public.

If there were untruths in the program, as Rep. Staggers implies, they can be refuted.

But when Rep. Staggers couples his investigation with a statement that the TV networks wouldn't be in business at all "unless the government gave them the right" this is bulldozing.

CBS—and anyone else in the news business—is subject to complaint, condemnation and the libel laws for what it presents to the public. But it ought not be subject to prying which could have no purpose except intimidation—which, in effect, is attempted censorship.

[From the Charlotte Observer, May 10, 1971]

MEDIA SHOULD CLEAN OWN HOUSE TO CLOSE GAP IN CREDIBILITY

(By Charles Crutchfield)

Long before the criticism of news reporting reached its present crescendo, I expressed

reservations about the fairness and objectivity of some of the things I had seen, heard and read in some of the news media.

As long ago as 1966, in The Forum, I questioned the publicity which some radio, television, newspapers and magazines gave to Stokely Carmichael and the Student Nonviolent Coordinating Committee (SNICK) which he headed.

I quoted publisher Ralph McGill as saying that SNICK had no more than 300 members—and yet this radical organization (which, according to Knight Publishing Co. publisher John Knight was ". . . an anarchistic group which is openly and officially committed to the destruction of existing institutions") was receiving banner headlines, lengthy filmed reports on the networks and feature spreads in the national magazines.

I believed then, and I still believe, that the news media were guilty of a colossal blunder in publicizing this tiny radical group and its leader out of all proportion to the influence they wielded or the number of people they represented.

Ironically, at the same time that Carmichael and his thimble-full of extremists were monopolizing the media, a group of 6,000 Negro educators (about 20 times the number of people which SNICK had) were in Charlotte for a convention.

The reception these blacks got was phenomenal—including being received into numbers of white homes—and yet the national news media completely ignored such an example of positive race relations from a Deep South city, focusing instead on an insignificant radical like Stokely Carmichael and building that man and his group into a household word.

Since that time, Mr. Agnew and others have attacked the media—both with general and specific charges. Specifically, CBS "The Selling Of The Pentagon" has come in for much criticism—and I reluctantly must confess that part of this criticism, at least, is wholly justified.

If, as charged, the network did take quotes out of context so that it appeared that individuals were giving answers to questions other than the ones they were answering, the program is suspect throughout. Beyond this, editorial comments were made which, in my opinion, had no place in a factual, objective documentary—especially personal statements and opinions by newsmen which were not labeled as such.

What some in the news media are doing—without being fully aware of it, I am convinced—is depicting a nation and a society in an inaccurate and distorted manner. I believe Newbold Noyes, Editor of the Washington Star, had this in mind when he recently told the American Society of Newspaper Editors that the press is "letting the kooks on both sides determine for us what constitutes tomorrow's news—and the kookier their activity, the bigger the news." He said, "We are giving our readers a view of society and its problems that even we know to be false."

At a time when the news media are being relied upon increasingly by the public, and when the appetite for news is at an all-time high, it is significant that a Gallup poll, taken a little more than a year ago, disclosed that more than half the college-educated people in this country believe that newspapers and network news present slanted and biased news. This should tell us something—that going on the defensive or sitting on our hands and hoping the situation will get better isn't going to solve our problem.

I fear government control of news as much as the next man, but I believe the problem is not primarily government but the public. Unless all of the media exercise self-imposed discipline and discretion, and learn to present the news in clearer perspective than they have done in the past, I think there is a very real chance that they will eventually lose the very thing that is essential to their continuation—and this is the confidence of the public they serve.

I should emphasize that many newspapers and magazines, as well as local raido and television stations, do a commendable job of presenting the news accurately and in proper balance. Others do not, of course, and the effectiveness of the total news media is hampered by these who slant or distort the news.

Most of the media don't hesitate to turn a critical eye on everything else on this planet; so isn't it time they turned that critical eye inward—and did a little self-examination?

I'm convinced it is time; and I'm equally convinced that they should report to the public that they are doing this and that they are just as anxious to present—as the public is to receive—news that is as factual, balanced and representative of what is going on as it is humanly possible to present.

Then, and only then in my opinion, is this critical credibility gap going to be closed.

In that regard, I hold in my hand this large volume of editorials. I am not going to put all of these in the RECORD, but these are editorials over an inch thick which come from all over the Nation, every region of the country being represented here, protesting what the committee has done and saying that the action we are about to take is unwise. If you want to review this record, I am going to leave it up here in the well of the House, and those of you who are interested I wish would come and look at the editorial opinions from around the Nation.

Mr. Speaker, at this point I yield to the gentleman from Nebraska (Mr. MCCOLLISTER), a member of the committee and one of the 13 who voted "no" on this resolution.

Mr. MCCOLLISTER. I thank the gentleman for yielding.

Mr. Speaker, it is to be regretted that the question which confronts the House—should a television network and its president be cited for contempt of Congress—should be resolved with so little debate and discussion. Less than 2 hours was allowed for consideration in the full Committee, and the time offered in the House is much too brief for a proposal of such far-reaching consequences. Our haste prompts a vote based more on emotional reaction than on thoughtful reflection of this ill-considered, dangerous course of action.

My vote in Committee against the citation was made for four reasons.

As I heard the argument and listened to the discussion it seemed to me that the committee did not need any additional evidence to satisfy its legislative inquiry. The evidence that tapes had been "edited," that individuals' words were given a distorted and deceptive meaning—all this seemed abundantly clear without the use of the "outtakes" which CBS refused to make available. It seemed unnecessary to me to resort to such extreme measures to gain so little.

Second, I felt that those whose words were twisted had available to them recourse in the courts. Although this action imposes on the individuals involved some difficulty and expense of time and energy, it did offer the opportunity for the facts to be weighed and a judgment made without provoking the grave constitutional issues in which the position of the House is so uneasy and insecure.

Surely it cannot be doubted that there is a first amendment question involved in this proposed action. Lawyers will describe the issue better than I am able to do but one does not need to know all the details of the court precedents and interpretations to recognize the constitutional confrontation here present. One can simply stand alongside the issue and feel the radiation of concern. Awake or asleep, in our conscious and subconscious we know this action by the House will affect the uninhibited, competitive, resourceful, presentation of news and opinions. That it is sometimes overdone, unfair, deceptive, and misleading is less of a concern to me than the inhibitions we shall create if we vote this citation for contempt of Congress.

Finally, if the citizen's need for fair, accurate, and reliable presentation of news and documentaries cannot be guaranteed by his Government, where can it be done?

He must depend first on his own discriminating judgment, on his accessibility to competing sources of news and opinion. In no activity is credibility more vital to success than is the gathering of the news. An organization which violates the well-established standards of professional journalism will suffer a loss in its believability. Such an organization will be labelled—eventually—a propagandist and its listeners and viewers will turn elsewhere for fair and accurate reporting.

When a government takes it upon itself to define what is fair and accurate it seems inevitable to me that the definition degenerates into what is necessary to perpetuate in power that particular group of men who happen to be the government at that moment. There is no protection to the citizen from these eventual excesses.

What is proposed in this citation is a sharp, dangerous veering from the course of constitutional limitation and the House ought not to have any part of it.

I urge the defeat of the motion.

I thank the gentleman for yielding.

Mr. BROYHILL of North Carolina. I thank the gentleman for his contribution.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from Washington.

Mr. ADAMS. I thank the gentleman from North Carolina for yielding.

Mr. Speaker, I have been deeply disturbed about the proposal to issue a contempt citation against Dr. Frank Stanton and CBS for refusal to supply the materials they used in the production of the CBS documentary entitled "The Selling of the Pentagon."

When I first heard of this matter, I discussed it with the chairman and indicated my deep concern that this matter might reach the stage of a confrontation between the Government and the free press and I did not believe this was a proper case for such a confrontation.

Since that time, I have attended the hearing which was the basis for the final contempt citation by the Subcommittee on Investigations of the House Interstate

and Foreign Commerce Committee. I have discussed the matter with the staff of the committee and also with attorneys for CBS, and requested that both the staff and the CBS attorneys supply me with any memoranda they created regarding the constitutional and legislative issues involved.

I have great respect for Chairman HARLEY STAGGERS of the House Interstate and Foreign Commerce Committee, and I recommended to him that the committee might obtain a formal opinion from a neutral constitutional authority before proceeding with the contempt citation.

After my review of this matter with the committee staff and completing my independent research on the constitutional issues involved, I have come to the conclusion that this particular citation is violative of the first amendment. There may be other circumstances when the outtakes of a television presentation could be obtained, but unfortunately we have before us only the circumstances of this case.

The circumstances of this case involve the threat of placing a member of the press in jail for refusing to submit to a Government review of whether or not the statements made by the press about the Government were deceitful. This is flatly prohibited by the Constitution as constituting governmental censorship. In the immediate circumstances of this case, the first amendment prevents the government from placing Frank Stanton in jail. The long-range circumstances could mean this action would taint any law we might pass that evolved from the use of this procedure. The House should, therefore, reject this contempt citation, both as a matter of constitutional law and to protect possible future legislative action in this field.

In support of this, I am inserting at this point in the RECORD the separate minority views to the committee report which I have filed today with the committee:

ADDITIONAL MINORITY VIEWS OF CONGRESSMAN BROCK ADAMS

I

I have joined with other members of the Committee in filing general minority views in opposition to the proposal to cite CBS and Dr. Frank Stanton for contempt of Congress. I am filing these additional minority views because I believe this particular citation for contempt involves a severe conflict with the First Amendment to the Constitution of the United States which each Member should consider before voting on this matter.

I agree with and support the general minority views that all the information that would be produced by the subpoena is either in the Committee files already or can be obtained by the Subcommittee on Investigations without use of the subpoena.

When I first became aware of the possible use of a subpoena to obtain all the materials used by CBS in producing this news documentary, I indicated my concern about this procedure to the Chairman. Although I am not a member of the investigating subcommittee, I asked permission of the Chairman to attend the subcommittee meeting as an observer when Dr. Stanton testified and I was present when he declined to produce the outtakes used by CBS in producing the documentary.

This hearing which is the basis for the contempt action was called after CBS had produced for the Committee the film as broadcast as well as a supplement to the film in which critics and proponents discussed the original documentary. The final hearing involved a second subpoena of the Committee which called specifically for all outtakes relating to the news documentary as broadcast.

Neither Dr. Stanton nor the CBS network has questioned the right of the subcommittee to investigate broadcast practices generally or to inquire into the particular circumstances surrounding the production of the film "The Selling of the Pentagon." Dr. Stanton appeared before the Committee and testified for several hours on the manner in which CBS prepares its news presentations and supplied the Committee with a copy of the CBS rules and regulations which are presently in effect regarding the production of news documentaries. He refused to produce the outtakes or to discuss orally how the outtakes were edited from the final film.

At the meeting of the full Committee when the contempt citation was issued, the materials that had been available to the subcommittee regarding the investigation had not been distributed to all members of the full Committee. I was concerned about this because the staff report seemed to indicate they knew all about the alleged distortions and the narrator for the documentary stated in the first part of the film:

"We sought no secret files, no politicians pleading special causes, no access to classified documents. We looked only at what is being done for the public—in public."

I therefore asked for time, which was granted by the Chairman, to review with the subcommittee staff the film as broadcast and to review the materials in the Committee files before this matter was presented to the whole House.

My examination with the staff director of the film in the committee file indicates that this documentary consists of films of Army exhibits at various identified points in the United States, interviews of individuals at specific times and places (who are available for interviews by the investigating staff), an interview with Daniel Z. Henkin, Assistant Secretary for Public Affairs at the Pentagon, a filming of certain speeches by General Walt, Colonel McNeil and others who traveled the country for the Pentagon, a film clip obtained from Congressman Hébert, and a series of film clips from various public Pentagon films.

As pointed out in the general minority views, I have obtained copies of the CBS editing regulations and the entire speech of Colonel McNeil and placed them in the Congressional Record for July 8. These materials, together with the analysis of the entire Henkin interview placed in the Record on March 8 by the Honorable F. Edward Hébert of Louisiana, I believe, establish that all the materials necessary to evaluate this documentary are in the possession of the subcommittee or can be easily obtained by interviewing the individuals who appeared in the documentary, and the outtakes would only establish the editing systems used by CBS.

II

Broadcast media are part of the free press

The question has been raised whether the electronic media are entitled to the same First Amendment protections as the written press. In *Rosenbloom v. Metromedia, Inc.*, 39 U.S. Law Week 4694 (June 7, 1971), the Supreme Court stated that the electronic media are entitled to the same First Amendment protections as the written press in private citizen libel suits. The First Amendment protections for the press against interference or repression by private citizens are more limited than the First Amendment protections against Government interference with the press. It seems clear, therefore, that any First Amendment protections against Government interference or repression apply to the electronic media. The electronic media in this case are certainly part of the "press."

The first amendment restrictions on Government action

The First Amendment is not just a protection to be used as a shield by the press. It is a limitation on Government authority. In direct, simple terms it prohibits making any law "abridging the freedom of speech or of the press."

Any argument that we as Members of Congress should only look to whether the subpoena was properly issued ignores the fact that we must decide whether the Congress has the power under the Constitution to jail a member of the press for refusal to cooperate in a Government inquiry which has as a purpose to determine whether the press was deceitful. Only if we answer yes do we reach the question of whether in this particular case the power of the Government on balance can be used on the press to make it submit the materials it used in creating a news story.

First amendment limitations apply in this case

I believe the use of the words "deceit" and "deception" as justification for this particular contempt citation will be viewed as Government surveillance of the press to determine if it unfairly criticized the Government. This is flatly prohibited by the Constitution as constituting governmental censorship.

The analysis is as follows:

1. The press through CBS makes a critical report about one part of the Government.

2. Another part of the Government states it is going to review what the press did in preparing this critical report and states it is investigating to see if there has been deceit.

3. The part of the Government conducting the review states it has the power to license and regulate this particular part of the press.

4. The Government proceeds by compulsory procedures to force the press to submit to this review.

5. After a review of the materials forced from the press, the Government passes a law to prevent similar press actions in the future.

As pointed out in the general minority views, there may be circumstances when Government power can properly be used in the necessary regulation of the public airwaves. There may be a different case when outtakes can be demanded, but if as I believe this particular case falls into the above listed five steps then the power of Congress to cite for contempt is limited and the case made very unappealing because a jail sentence seems very harsh for the result to be obtained. This is what has been referred to as the "chilling effect" because it acts to prevent any journalist from producing a television news show that is critical of any powerful Governmental agency or official. The censorship implications are clear.

I am deeply troubled that a major part of the justification for the subpoena is that we have a case of deceit. We have here an investigating subcommittee making the inquiry and it does not have legislative jurisdiction but instead it will file a report, and in that report will make a *judgment* on whether or not there was deceit practiced in this program. This will then be referred to the appropriate legislative committee for possible future action.

I have set forth in section I of these views the availability of information to the Subcommittee on Investigations to show that the subcommittee can prepare a report on this documentary without requiring a member of the press to supply testimony or materials to prove whether or not deceit was practiced. From this, a report could be prepared to the appropriate legislative subcommittee so that

hearings could then be held to determine if some type of legislation were needed without facing the challenge that it is part of a censorship system.

We can approach the problem of possible fraud in the production of electronic news through the establishment of certain mechanical systems which indicate what the electronic media are doing. This is the equivalent of creating the ellipsis (. . .) in print, and there are other avenues to be explored, such as direct indications on screen as to the manner in which taped interviews are being used.

There is no way, however, that I know that the Government can by law establish a standard for "deceit or truth." What is truth to one man is deceit to another. Judge Learned Hand, referring to the newspaper industry, points out this essential dilemma of the Government in the famous case of *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943):

"[The newspaper] industry serves one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all."

III

I have great respect for the Chairman of the Committee and I know of his great concern about the American public receiving the truth. The problem we face is that we as representatives of the people do not simply stand in the shoes of the people in our relationship to the free press. As we meet together on this matter, we are the Government. We as the Government, have great power conferred upon us by the people, but the people have also placed restraints on us through the Constitution which prevents us from exercising this great governmental power in certain circumstances.

The power to place a man in contempt of Congress and thus subject him to a possible jail sentence is one of the cost awesome Governmental powers that we collectively possess as Members of the House of Representatives. I not only believe this power should be used with great restraint, but I also believe in this case we are prohibited by the Constitution from using it. I therefore respectfully dissent from the majority views.

I have also received today a copy of a letter from Prof. Louis H. Pollak of Yale University Law School, a noted constitutional authority. This letter fully supports the view I have taken that this particular contempt action directly violates the first amendment, which expressly directs Congress to "make no law—abridging the freedom—of the press." So the Members will have an opportunity to review the authorities Professor Pollak has cited, I am inserting in the RECORD at this point a copy of his letter dated July 9, 1971:

YALE UNIVERSITY LAW SCHOOL,
New Haven, Conn., July 9, 1971.

WILMER, CUTLER & PICKERING,
Washington, D.C.

DEAR SIRS: You have asked my opinion on the propriety of the resolution now pending before the House of Representatives, as favorably recommended by the House Committee on Interstate and Foreign Commerce, that Dr. Frank Stanton and the Columbia Broadcasting System (of which Dr. Stanton is President) be cited for contempt for failure to comply with the subpoena issued on May 26 by the Committee's Special Subcommittee on Investigations. In view of the fact that the House is expected to consider this matter early next week, the pressure of time precludes the preparation of a fully detailed opinion. Wherefore, I shall confine myself, in this letter to the expression of my over-all conclusions and the general premises from which those conclusions flow.

My over-all conclusions are these:

1. Coerced compliance with the subpoena of May 26, calling for the production of the "outtakes" of the CBS news and news-commentary program entitled *The Selling of the Pentagon*, would invade the news-gathering and editorial functions of CBS and its reportorial and editorial staff in contravention of the freedom of the press guaranteed by the First Amendment.

2. Fidelity to the Constitution required Dr. Stanton not to comply, and not to permit any other agent of CBS to comply, with the subpoena of May 26.

3. For the House to vote a citation of contempt would be to vote an unconstitutional sanction; and for the House to request that the Attorney General prosecute Dr. Stanton and/or CBS for contempt of the House would be to request the executive branch of the government to pursue a judicial result foreclosed by the First Amendment.

The premises from which the foregoing conclusions flow are these:

A. Although the investigatory power of the Congress, and each of its chambers, is broad, that power, like all the powers of Congress and of the other branches of our government, is subordinate to "the restraints of the Bill of Rights. . . ." *Watkins* v. *United States*, 354 U.S. 178, 198; cf. *United States* v. *Rumely*, 345 U.S. 41.

B. To compel the production of a television reporter's or editor's "outtakes" is indistinguishable from compelling a newspaper reporter or editor to produce the notes and drafts from which his published copy is developed. The chilling effect of such an intrusion upon the reporting and editorial functions hardly requires argument. The strength of the First Amendment guarantees which insulate these raw materials of journalism from coerced production is dramatically demonstrated by *Caldwell* v. *United States*, 434 F. 2d 1081 (now pending on certiorari before the Supreme Court). In *Caldwell* a federal grand jury—whose investigatory powers in the realm of federal law enforcement are comparable in breadth with those of Congress—sought to compel a newspaper reporter to produce his "notes and tape recordings" with respect to matters under inquiry by the grand jury. 434 F. 2d at 1083 n. 2. Protest of that subpoena resulted in its supersession by a first, and then a second, far narrower subpoena merely requiring the reporter to attend and testify at a grand jury hearing. On challenge to that far more limited subpoena, enforcement was granted by the district court only on terms protecting the reporter from forced disclosure of information conveyed to him confidentially. But the court of appeals concluded that even this protective arrangement was constitutionally defective; even coerced *attendance* (shorn of any requirement of the production of documents or tape recordings) must be predicated on terms consistent with the freedom of the press:

"[W]e hold that where it has been shown that the public's First Amendment right to be informed would be jeopardized by requiring a journalist to submit to secret Grand Jury interrogation, the Government must respond by showing a compelling need for the witness's presence before judicial process can issue to require attendance." (434 F. 2d at 1089.)

Although I believe the holding of the court of appeals in *Caldwell* was correct, and should be sustained by the Supreme Court, I would not that even the ruling of the district court would sustain, as against First Amendment guarantees, only a far more circumscribed subpoena power with respect to Dr. Stanton and CBS than that asserted by the Special Subcommittee on Investigations: In *Caldwell* the grand jury was investigating problems of law enforcement—clearly within its purview—not, as here, the constitutionally protected preserve of journalism. The subpoena sought to be judicially enforced was a subpoena to testify—not, as here, to produce the working materials of the journalist—and the testimony sought to be elicited was secret, not public. In short, even the district court's decision in *Caldwell*, let alone that of the court of appeals, establishes *a fortiori* the unconstitutionality of the subpoena directed against Dr. Stanton and CBS—unless it be the case, as argued by the June 8 Staff Memorandum of the Special Subcommittee on Investigations, on which the Special Subcommittee appears avowedly to have relied, that "With respect to the applicability of the First Amendment, broadcasting is not identical to other means of communication . . ." and "The legal status of a broadcaster cannot be equated to that of a newspaper publisher. . . ." (Staff Memorandum, p. 74.)

C. But any suggestion that Dr. Stanton and CBS—and the public right they assert—are not protected by the First Amendment, because CBS is a television network and not a newspaper, is of course foreclosed. As recently as June 7, the Supreme Court in *Rosenbloom* v. *Metromedia* reaffirmed that the First Amendment protects the broadcast "press" just as it protects the printing press. Of course it is true that Congress has substantial regulatory authority over television and radio licensees, pursuant to its stewardship of the limited number of broadcast frequencies. But such authority carries with it no power to trammel the free press rights of the broadcast media and the public they serve. In that respect—the respect controlling here—the broadcaster and the newspaper publisher are constitutional equivalents. I suggest that the point may be brought home by a reminder of admonitions voiced by Justices Holmes and Brandeis, dissenting in *Milwaukee Publishing Company* v. *Burleson*, 255 U.S. 407, from assertions that the government could give or withhold the second class postal privileges of newspapers and magazines on whatever terms it chose. Their dissenting views—cited with approval by the Court majority a generation later (*Hannegan* v. *Esquire*, 327 U.S. 146, 156)—were these:

"The United States may give up the Post Office when it sees fit, but while it carries it on the use of the mails is almost as much a part of free speech as the right to use our tongues. . . . (255 U.S. at 437; Homes J.)

"Congress may not through its police power put limitations upon the freedom of the press which if directly attempted would be unconstitutional. This court also stated in *Ex parte Jackson*, that 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' It is argued that although a newspaper is barred from the second-class mail, liberty of circulation is not denied; because the first and third-class mail and also other means of transportation are left open to a publisher. Constitutional rights should not be frittered away by arguments so technical and unsubstantial. 'The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name.' *Cummings* v. *Missouri*, 4 Wall. 277, 325 (255 U.S. at 430–431; Brandeis J.)

To paraphrase Justice Holmes, the United States may give up the use of the radio and television waves when it sees fit. But while that form of the press is in use, the First Amendment protects the freedom of that press.

D. In the present case, the unconstitutionality of the subpoena sought to be enforced

is only underscored by the fact that the Special Subcommittee already has in its possession the overwhelming bulk of the information the subpoena is said to be designed to elicit; that is to say, the Special Subcommittee has already been given by Mr. Henkin his own transcription of the CBS interview with him. And indeed, if nonetheless there still remained any additional information in which (contrary to my views, *supra*) the Special Subcommittee could be regarded as having sufficient interest in the production of, as to justify the exercise of the subpoena power, that remote possibility disappeared on June 28, the day before the Special Subcommittee voted to recommend the citation of Dr. Stanton and CBS for contempt: on June 28 Dr. Stanton issued new "CBS Operating Standards: News and Public Affairs" to various officers and department heads of CBS and its subsidiaries. The next day—June 29—after voting the recommended contempt citations, the Special Subcommittee issued a news release reciting and explaining its action; that release also contained these sentences:

"The Subcommittee also noted that this morning Dr. Stanton released CBS' new operating standards for news and public affairs. If these guides had been followed in "The Selling of the Pentagon," the Subcommittee noted, its inquiry would not have been necessary."

It seems manifest that, taking at its strongest the Subcommittee's stated case for launching the inquiry in the first place, its inquiry is no longer necessary. For the House now to vote contempt citations would, I believe, compound the unconstitutionality of the subpoena of May 26.

E. When the House votes on this matter, its members would do well to bear in mind that the First Amendment expressly directs *Congress* to "make no law . . . abridging the freedom . . . of the press. . . ."

Very truly yours,

LOUIS H POLLAK.

I am also greatly concerned because the scope of this contempt citation is being widened by greater and greater use of a purported legislative justification to investigate falsehood or deceit. I have examined the subcommittee statement attached to the letter of Chairman STAGGERS dated July 8, 1971.

On page 3 of the statement, it is stated that—

The Committee by its subpoena is seeking nothing more than the best and only real evidence to lay to rest the charges that CBS has engaged in calculated falsehood.

This is far different from the subcommittee's April 21, 1971, statement of legislative purpose wherein the subcommittee spoke of "practices which might result in misleading and deceiving the public." Apparently the subcommittee now speaks of "calculated falsehood," which means that an accusation is now being investigated to determine whether a falsehood was transmitted with knowledge that the material being transmitted was false or with a reckless disregard for whether the material was true or false. My examination of the record shows no evidence that CBS was involved in a deliberate or malicious effort to publish a falsehood, but this is now being made part of the investigation.

This brings into full force the chilling effect of this subpena. I have available a statement by Walter Cronkite of CBS who is the so-called "anchor man" of the evening news program and has acted as a principal correspondent in the coverage of special events such as the space missions and national political conventions and elections. He sets forth in precise detail what will occur to reporters and editors if the Government is involved in surveillance of their notes, film footage, and other materials.

Mr. Speaker, I would request permission that I might insert at this point a copy of the letter of Walter Cronkite which gives a view into the effects this contempt citation would have on individual newsmen.

The SPEAKER pro tempore (Mr. LINK). Is there objection to the request of the gentleman from Washington?

There was no objection.

The material referred to follows:

STATEMENT OF WALTER CRONKITE

Since April, 1962 my principal assignment with CBS News has been Managing Editor of the CBS Evening News with Walter Cronkite, a thirty minute news broadcast presented five nights each week by the CBS Television Network. In addition, I frequently serve as "anchor man" in the coverage of such special events as space missions and national political conventions and elections. Prior to joining CBS in 1950, I was a reporter-correspondent with United Press International for eleven years, covering the Western Front in World War II, the Nuremberg Trials and post-war Moscow.

My work involves the preparation of the considerable volume of material necessary for such extemporaneous broadcasts as political conventions, elections and space missions. It also involves participation in the determination of which topics should be covered on daily television news broadcasts and how they should be covered.

The question of "outtakes" around which the investigation of the Staggers Subcommittee has centered is, of course, an important one. But it is only subsidiary to the far greater issue of the right of a branch of government to review the judgment of those who collect, edit and broadcast the news.

The idea is clearly contradictory to the intent of the First Amendment, i.e., to protect both the people and the government through the free exercise of speech and press.

But even if there had been no First Amendment it should be clear that any such government supervision as proposed here, whether after the fact or not, removes broadcasting as a viable news medium.

It scarcely bears argument that a news medium must function without fear or favor if it is to properly discharge its obligation to inform the people. Any governmental panel that assumes the right to call a news organization to account must be presumed to be hostile. It scarcely would seek to investigate reporting with which it agreed. To place the broadcast medium under the threat of such investigation is to place it permanently under the fear of accountability to unfriendly antagonists wielding the power of legal restraint.

The effect would be more than chilling on broadcast reporting. It would put journalistic enterprise in the deep freeze, with the rigidity and the heart and compassion of a block of ice.

It is likely, indeed, that many broadcasters would be unwilling to commit unlimited resources of their legal and executive staffs to defend a documentary or daily reportage when it would be far more comfortable simply to forego mention of the item or the subject.

Impossible would be the position of the journalist working under such understandably timid management. For each piece of potentially controversial reporting (and there is scarcely any topic, including the weather, that is *not* controversial) he would presumably have to go to management for approval to broadcast.

Or, since this would be impractical, he would ignore the item and fill his broadcast with something less likely to involve his company and himself in lengthly review by non-professional and frequently politically-biased critics.

To the extent that journalists must base their judgments on factors which are totally unrelated to the journalistic function, the quality of these judgments diminishes. If reporters, editors and producers must consider in their decision making the possibility of being summoned before an investigative arm of the government to justify these decision, I believe that independence and vigor in broadcast journalism will be inevitably sacrificed.

It should be noted that, if this principle of accountability to political bodies is established through this contempt action, the practice may not stop with Congress. By the same doctrine local radio and television stations may find themselves hauled before city councils, county courts and state legislatures. While Congress' authority may be greater because of the Federal licensing power, these local bodies have their own sources of pressure (occupation licenses, construction permits, fire inspections, et cetera). This harassment by investigation could be carried to a point that it would prove too costly and hence unwise for a local station even to attempt to report and document the controversial news of the community.

There is no question here of whether the reporters and editors perform well or poorly, with accuracy or inaccuracy or even with objectivity or with bias. It is inconceivable that those who are elected to public office on partisan platforms, who represent, properly, the special interests of their region, who by their political nature hold strong views on the issues of the day, should be vested with the right to say whether broadcast journalism is performing in the people's interests. They may be qualified to define those interests in *their* lights, but in a democracy it is essential to have a monitor on those who would set themselves up as qualified to exercise that privilege.

The newspapers have served this function well. Today, unfortunately, economic circumstances have reduced the number of daily newspapers until few American cities have more than one newspaper or, perhaps, two newspapers under single ownership. In these cities, where there is an absence of newspaper competition, there is the possibility, of course, that the single newspaper, or two newspapers under single ownership, will represent only comfortable majority interests.

The more numerous broadcast outlets provide a superb watchdog for the print press, preventing it, through inadvertence, sloth or caprice, from ignoring or even distorting important news of the day.

Likewise the newspapers, as they have proved, are and will continue to be severe critics of the broadcast medium. There is adequate check and balance here between competing media to assure sound performance without the interference of government.

To deny the free play of these forces by putting one of them under the surveillance of government would be to deny the people the free press the founding fathers thought essential to the workings of a democarcy.

Vice President Agnew was right in his Des Moines speech of November, 1969, when he said that a handful of men determine what news will be shown on the networks. I know of no other way the highly delicate job can be done. It cannot be done by a committee of politicians, bureaucrats, educators, sociologists or what not, nor can it be done by plebiscite.

Nor can it be done *without fear or favor*—which means it cannot be done at all—if the reporter or editor must be constantly looking

over his shoulder for those who would have his product reflect *their* standards of right and wrong.

If broadcast journalism is brought to that state by court affirmation of the right of Congress, or anybody else, to question the judgment of its practitioners through the use of compulsory process, then it ceases to be an energetic seeker of the truth but becomes a pallid conduit for that propaganda which is palatable to the majority of Congress or the administration of the moment—Republican, Democrat, Wallacite or Yippy.

And if it came to that, there would be no reason for professional journalists to remain in broadcasting. Those who stayed would be those satisfied with serving the majority their daily diet of the indisputably bland.

Mr. ADAMS. Mr. Speaker, the part that is most disturbing in his whole statement is the second-to-last paragraph which states that if the editing and producing of television news is to be reviewed by government—whether at the Federal, State or local level—then it will cease to be an energetic seeker of the truth but instead becomes a pallid conduit for that propaganda which is palatable to the majority of Congress or the administration of the moment—Republican, Democrat, Wallacite, or Yippy, and his ultimate conclusion, which is:

And if it came to that, there would be no reason for professional journalists to remain in broadcasting. Those who stayed would be those satisfied with serving the the majority their daily diet of the indisputably bland.

Mr. Speaker, the statement of this journalist demonstrates why I believe the Constitutiton is not a dry, legal document but is a living, dynamic part of our Government. The First Amendment guarantee of a free press has just as much validity today in terms of maintaining a free and open society as it had in the days of Peter Zenger and Thomas Paine. I hope that tomorrow Congress will recognize not only the great American tradition of a free press, but the present necessity of maintaining it as a vital part of our society.

Mr. Speaker, I thank the gentleman from North Carolina (Mr. BROYHILL), for yielding to me, and I want to join with the gentleman in the statement that he made. I think the gentleman from North Carolina (Mr. BROYHILL), in the course of the debate on this matter, and in the course of the committee hearings, has made a great contribution, and I as one Member of this body appreciate it.

Mr. BROYHILL of North Carolina. Mr. Speaker, I thank the gentleman from Washington (Mr. ADAMS).

Mr. MOSS. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL of North Carolina. I would be glad to yield to the gentleman from California (Mr. Moss).

Mr. MOSS. Mr. Speaker, I think the fact that we have taken the special orders here this afternoon brings very sharply into focus the need to change the rules of the House for consideration of matters as significant as a resolution to cite for contempt.

When the matter is called up tomorrow, there will be 1 hour's time and within the course of that 1 hour Members are going to have to decide whether or not they feel an adequate showing has been made to justify citing Dr. Frank Stanton and CBS for contempt of Congress.

Now they are going to make this decision without all of the information before them because much of it is not going to be published until tomorrow. I hope the Members of this body who read these remarks tomorrow morning will do so with great diligence, lacking the opportunity to study it and to give it the very sober consideration that it requires.

It is a grave step for this Congress to cite the President of a major broadcasting network for contempt. A very grave step—when one considers it in the context that the Congress or the Committee on Interstate and Foreign Commerce through its Special Investigations Subcommittee has requested.

We requested the outages of this program—the portions not broadcast in order to review editorial judgments and to test them against some nebulous or nonexistent Federal standard of truth or a Federal pattern of conduct to avoid deceit knowingly or unknowingly.

I do not know where these guidelines exist, but I do know it is not the proper role of Government to undertake to determine that issue in the legislative body. There is a regulatory commission and apparently it found no basis for action here—and I think quite wisely so. It found no basis for action because it recognized that you could not get a unanimity as to what constituted truth in the broadest sense—or what actually you may have to take to avoid some semblance of deceit.

I am mindful of the fact that every Member of this body during the course of the congressional session asks repeatedly for the right to revise and extend remarks made here on the floor of the House. Is that revision deceitful? Is it untruthful? I would not want to judge whether my colleagues have acted with complete fidelity to the standards of truthfulness and candor or whether they have engaged in a little deceit. They might even do so inadvertently. Again I do not think it is our business to undertake this kind of examination.

I want to make it abundantly clear that I have never in my years in this House ducked the responsibility for holding the broadcast media fully accountable for their actions. I have not been generally regarded as one of their most sympathetic listeners. I have been called upon as a member of the original Legislative Oversight Subcommittee of the Committee on Interstate and Foreign Commerce and here I think I am probably the only member of the Committee on Interstate and Foreign Commerce who was originally on that subcommittee, when it conducted the investigations into the $64,000 question series and into the payola practices of the industry. I was very strongly criticized as were many of my colleagues for the actions we took then.

I think they were appropriate and on other investigations that have been made, I have joined in. But this one, in my judgment, is not appropriate. This is the wrong kind of case for the Congress to get into.

This is a case of second guessing people who are engaged in a business of collecting and reporting news—and that is not our business. The mere fact that the media is licensed should not give us license to do that but it should impose upon us greater restraint to approach these borders of our powers with a great deal of caution. Nothing could be produced if Dr. Stanton came back before the committee and gave it everything it asked for. Nothing would be produced that is not now available. I have talked with the chief counsel of the Special Investigations Subcommittee. I have asked for any indication, document, of any kind of misrepresentation in this program that we do not already know about. But nothing has been produced.

We have no need for this information. It is not necessary for us to have it in order to legislate, if there are appropriate areas here for legislative action. This is the kind of case that destroys or damages greatly the image of the Congress, and I think it might well be the kind of case in a court of law which could lead to a decision which would or could in fact diminish the investigatory powers of this body. I think we should avoid that kind of development. I think we should avoid this confrontation, and I hope that every Member of this body recognizes the very grave responsibility imposed on them in voting tomorrow on whether or not to carry forward with this contempt citation.

Remember, this is not a personal issue. This is not a case of supporting or not supporting the chairman. It is not a case of getting or not getting Dr. Frank Stanton. It is not a case of supporting or not supporting the majority or minority on this issue in the committee. It is a case of determining, after the application of your own best judgment, what is right and appropriate for the occasion. If every Member does that, and does it with fairness, then I have no question of the outcome. If they fail to do it, and if instead of taking that responsible course they act on the basis of personal bias or because somebody asks them to act in any manner, then they will do a disservice to themselves and a disservice to this body.

I thank the gentleman for yielding.

Mr. BROYHILL of North Carolina. Mr. Speaker, I yield to the gentleman from Rhode Island (Mr. TIERNAN).

Mr. TIERNAN. I thank the gentleman for yielding.

I wish to concur with the thoughts of the previous speakers, including the remarks of the gentleman from North Carolina. It is quite significant that Members who voted not to report out the resolution citing the President of CBS and also CBS for failure to respond to the subpena represent Members on both sides of the committee.

As the gentleman from California (Mr. Moss) has indicated, it is certainly not a vote in support of one party or another.

Another point that I believe should be made clear today is that one of the reasons the special order was important today, is that the report of the committee is not available now. Every Member who voted against the citation has sub-

mitted, in concurrence with other members of the committee, their views in opposition to this action. Some have even felt so strongly that they have inserted their own individual views in the RECORD. What the gentleman from California (Mr. Moss) and yourself have done by having this exchange here today is at least to make available to the Members tomorrow in the CONGRESSIONAL RECORD the information you have presented so that they will be able to read the viewpoints of yourself and also some of the information that the gentleman from Washington (Mr. ADAMS) has been able to put into the RECORD.

The vote that we will have tomorrow will be a very important one. I have attempted to obtain from the chairman of the full committee some indication of how much time will be allocated to those who have different views, views shared by you and I with regard to this action, and we have not been able to obtain that because under the Rules of the House we will have one hour of debate and the chairman has control of that time. He has certainly indicated that he will be fair, but at the present time we do not know whether that fairness means one minute, 5 minutes, 10 minutes or 1 hour. We have been attempting to obtain an indication that he will give us 5 minutes to express the views of those who want to help the gentleman, thus giving equal balance to the debate that will be going on the floor. We think that is extremely important.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from West Virginia, the chairman of the committee.

Mr. STAGGERS. I would like to say I do not remember if the gentleman has asked me one single question about time. Certainly I do not remember where it was, or how it was, but I must have been listening to some other people if the gentleman asked me one single question about time.

Mr. TIERNAN. If the gentleman from North Carolina will yield further, I will ask the chairman if we did not have a discussion in the well of the House last Wednesday, when I asked how much time would be allocated to those of us who were not in agreement with this action of the committee, and the chairman's response was that he would be fair.

I certainly agree that the chairman has always been fair, and he is fair, but I am trying to make the point that as of this moment the chairman has not agreed to give 5 minutes or 1 minute or 10 mintues or any time of the 1 hour that is going to be allocated to him and under his control.

It certainly is within his right not to give any time or not even to indicate how much time he would give, but it is very difficult for us who have people who want to speak on this very important debate to not know how much time we can allocate to the gentleman in the well, or the chairman of the Judiciary Committee, or some other committee.

I certainly have no control of the time, but I yield to the gentleman who does have control of the time.

Mr. BROYHILL of North Carolina. What I want to bring out is that unfortunately under the rules of the House we have only 1 hour of debate. I certainly agree with the gentleman from California that the rules of the House should be amended or changed so that in cases like this we may have adequate debate to bring out all sides of this issue, or something else if a similar issue comes up in the future.

That is the reason why we have taken this time this afternoon—to bring to the attention of the Members in this way the fact that there is another side, that Members have another opinion, and that we have a dissenting opinion, and there is expert opinion available that says we should not take this action.

I have talked to the chairman of the committee. He has not made up his mind, he has told me, as to the exact allocation of time, but he has indicated a willingness to be fair in that allocation, and certainly I am going to go along with him in that regard. I would like it very much if he would allocate 30 minutes of the 1 hour to me.

Mr. STAGGERS. Mr. Speaker, if the gentleman will yield, when the gentlemen came to me, in all fairness, he would have to admit, he asked for 15 minutes for his side, and that would leave only 15 minutes on this side. I said I would try to be fair, did I not? I told the gentleman I could not give him 15 minutes.

Mr. BROYHILL of North Carolina. I asked the chairman for 15 minutes for the Republican dissenters and 15 minutes for those who voted no on the majority side. He told me he could not allocate the time at that time.

Mr. STAGGERS. What would be fair and normal, and I will state it tomorrow, would be to give time to the committee according to the proportion of those who voted no and the proportion of those who voted yes. Therefore, for those who voted yes there would have to be 40 minutes, and for those who voted no, there would have to be 20 minutes.

Mr. TIERNAN. We would be happy to agree to that.

Mr. BROYHILL of North Carolina. Mr. Speaker, I feel that arguing this point is not what we should be doing. I believe we should be arguing the issue.

Mr. TIERNAN. Mr. Speaker, I would appreciate it if the gentleman would yield further. I think it is important to pursue this point, and I think if the chairman would indicate that those who are in opposition to the action that has been taken by the committee would have 20 minutes for those with similar views, I, for one, would be very pleased with that, because then we can allocate the time among the many Members who have requested time to speak on this point, and I think that would be fair, but I am not saying the chairman has indicated here he will do that. I understand, but I think in all fairness it would give us an opportunity tonight to prepare for the many requests that have been made if the chairman would indicate just how much time will be given those who have signed the minority view and also those who are not members of the committee who have indicated we should not take this action.

Mr. STAGGERS. If the gentleman has said he would be satisfied with 20 minutes, I can assure him he will have 20 minutes, but I want to be fair.

Mr. TIERNAN. I think the gentleman in the well would be happy to control that for us in the minority, and I think we can agree on that.

Mr. Speaker, I want to thank the gentleman, first of all, for taking the time to present his views in the committee and also for taking this special order tonight.

In view of the fact that it will be difficult for the committee to have a printed report of the committee, and also the minority views, available for the Members of the House, I believe at least the Members will have an opportunity to read in the CONGRESSIONAL RECORD tomorrow morning the varying points of view. I believe that is most important.

I know the gentleman joined with some of us in sending out the "colleague" letter, which we hope will bring this matter to their attention further tomorrow.

I thank the gentleman again.

Mr. BROYHILL of North Carolina. Mr. Speaker, may I conclude by stating that the committee states it is operating in good faith and it is operating within the investigative powers of the Congress to look into the need for legislation in the broadcast news area.

The committee claims that examination of these out-takes, or prints, scripts, or what have you from this program called "The Selling of the Pentagon" is essential in order to formulate this legislation.

The committee will also be saying that the broadcast industry holds a public trust which distinguishes it from the role and the duties of the print media.

As the public's representative, the committee asserts that it has the power and that it has the obligation to exert some strict supervision over the franchise or license it awards these broadcasters when they are granted access to the public airways.

I, as one Member, do not argue with the committee's good faith and do not argue with the assertion that the Congress has powers and perhaps some duties, and that it should effectuate some clearly outlined course as between the commercial broadcasters, the Government which licenses them, and the public interest that has to be served.

But I do feel strongly if the Congress intends to legislate any new broadcasting policies it does not need the out-takes from "The Selling of the Pentagon" in order to legislate. So I do not believe the fairness doctrine is an issue here. I do not believe there is any charge that any illegal action has been taken. I do not believe these are issues. The news content, it appears to me, is the issue.

Just as unfettered reporting and presentation of the printed news is protected by the first amendment to the U.S. Constitution, so I feel strongly that this protection must be extended to the electronic news media if they are going to provide essential information and, of course, sometimes the painful function of keeping the public informed and aware of the workings of this society.

Mr. ANDERSON of California. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from California.

Mr. ANDERSON of California. Mr. Speaker, I thank the gentleman from North Carolina (Mr. BROYHILL) for yielding, and I commend him for his remarks regarding the forthcoming action to cite CBS President Frank Stanton for contempt of Congress.

This special order has been most helpful in bringing to light the many points which are involved in the congressional contempt citation, and I join with the gentleman (Mr. BROYHILL) in opposing this motion.

To me, a free, and inquiring press guarantees the people's right to know who, what, where, why, and how its Government operates. To censure, bridle, or control the views of the news media is to deny the people the facts that they must have to formulate opinions, and to choose their representatives.

I oppose the action to cite CBS for contempt—not because I am pleased by all the editing methods used by broadcasters—but because I feel far safer getting my news and views direct from the wide choice of independent voices available to us than I could ever feel under censorship from any level of government, however well intended.

The best, and indeed, the only censure of the news must be the audience for which it is intended—the public. For if the public is appalled or incensed by the media, then it will turn to other sources for its news. The threat of public disbelief and contempt should hang far heavier over the media and its commercial sponsors than any legal action.

Mr. VAN DEERLIN. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL of North Carolina. I yield to the gentleman from California.

Mr. VAN DEERLIN. I thank the gentleman for yielding.

I want to address myself to certain inconsistencies here today.

I know my other colleague from California (Mr. Moss), has referred to the vulnerability we all hold as coeditors of the most edited, altered, rearranged, in some instances staged—and, according to our critics, faked—documents in the entire Nation.

I hold in my hand what is known as the CONGRESSIONAL RECORD. Ah, that it were a record. Unfortunately, it is what we who compile it wish to make it.

One might wonder how it is that men, 435 of us—drawn from so many backgrounds, from so many walks of life—regularly happen to appear in print as so grammatical, so well ordered in our syntax, so inspired in our ideas, so orderly in the progression of our thoughts as we do.

Some of us who are sometimes not heard to complete two sentences out in the cloakroom can come down into the well of this House and mumble three magic words, "revise and extend," then go back to our offices and, lo and behold, the next day turn up in print as a veritable Demosthenes. Of course, the answer is that we have associates in our office who are very skilled at putting words together. I imagine if some of those typewriters back in our offices contained chlorophyll, this Chamber might be transformed into a veritable Hanging Garden of Babylon, so eloquent are we in print.

Nor is that all. Does anyone forget a few months ago—and, of course, this occurred in the other body—a Member who was embarrassed when he had hoped to be here for a vote. It developed that he was not even in the District of Columbia, but was winding up a skiing trip in Colorado. Yet the RECORD for that day contained six different speeches by the gentleman, all inserted therein during his absence.

Of course, we in the House are a little more concerned with validity. We insist upon something called Extensions of Remarks in the RECORD. Here, of course, if we are absent, anyone from our office can insert an entry into the RECORD which appears therein as an address delivered in the House of Representatives by the Honorable So-and-So on the given date. It even begins with "Mr. Speaker" followed by a comma. Now, I wonder why we do it that way unless it is intended to persuade the voters back home that we are indeed here on the floor, actually making a speech which we can then clip out of the RECORD and send to whoever is interested back in our district.

The fact of the matter is that this document is guilty of virtually all the sins that the network, CBS, has been accused of in the instant citation.

Mr. Speaker, I am concerned about another bit of inconsistency in this move. The gentleman in the well and I have been members of this committee for the same length of time. We recall that less than 2 years ago there was another citation voted by the committee, a citation for contempt. This citation was against an outgoing Chairman of the Federal Communications Commission. The Federal Communications Commission is an arm of the Congress. The Chairman of the Federal Communications Commission is a servant of the Congress. Yet this Chairman had refused pointblank, both in person and in writing, to provide our committee with documentation which we—all of us, or almost all of us—felt was absolutely essential to the investigation of a matter that was causing us considerable concern. This was a radio broadcaster in the Midwest who had grossly misled the public in the conduct of contests on his station, and had unquestionably faked the program logs that he submitted to the Federal Communications Commission. His license had been renewed on a temporary basis for 6 months, and very rightly the Commerce Committee leadership, and we who voted with the leadership felt that the Commission Chairman should be brought before us. He possessed certain documents which the FCC had considered when they issued the license.

We were refused the right to share a look at that documentation. In response, we voted a citation for contempt. This was a citation involving no national security, involving no first amendment rights to dissemination of opinion through a free press. It involved only our dominion and our responsibility vis-a-vis the FCC, an arm of Congress. That citation was never presented to the floor of the House for action.

Mr. Speaker, I must say I am at a loss to know why. Yet we are asked to vote a citation now which could result in the jailing of a very prominent, a very valued American.

Mr. Speaker, I thank the gentleman in the well for obtaining this time. The gentleman has been a splendid leader within our committee on his side. We have not always been together, and I dare say we shall not always be together in the future. But I think mine will be the first name appearing under his in the dissenting views in the printed report accompanying this privileged resolution when it comes to the floor.

Mr. Speaker, I want the gentleman to know how proud I am to share in the views which he has prepared and presented so well.

Mr. BROYHILL of North Carolina. I thank the gentleman from California for his contribution.

Mr. MILLS of Arkansas. Mr. Speaker, will the gentleman yield?

Mr. BROYHILL of North Carolina. I am pleased to yield to the distinguished chairman of the Committee on ways and Means.

(Mr. MILLS of Arkansas asked and was given permission to revise and extend his remarks and to include extraneous matter.)

Mr. MILLS of Arkansas. Mr. Speaker, I have some serious questions in my own mind about the citation, with all due respect to my good friend from West Virginia, the chairman of the committee.

I have tried to inform myself as much as I can with respect to it.

I have read some statements from some of the CBS journalists which I think would be of interest to all members of the committee which I insert at this point in the RECORD.

The statements referred to follow:

STATEMENT BY WILLIAM J. SMALL

1. I am William J. Small, News Director and Bureau Manager of CBS News in Washington. I have been with CBS since 1962 and in my present position since 1963. I have been in broadcast journalism for over 20 years and have had some limited newspaper experience prior to that. I have been News Director of Radio Station WLS in Chicago and News Director of WHAS Radio and WHAS-TV in Louisville prior to joining CBS. I served as the First President of the Illinois News Broadcasters Association, various offices and finally President of the international Radio Television News Directors Association, and am presently a Regional Director of *Sigma Delta Chi*, the National Journalism Society and have for many years served as Vice Chairman of its Freedom of Information Committee with specific responsibility for FOI problems in broadcasting. I am the author of *To Kill A Messenger* (Hastings House, 1970), an examination of the social and political impact of broadcast news which was honored by *Sigma Delta Chi* this year as the best research in journalism published during the previous twelve months.

2. My duties at CBS News consist primarily of editorial direction and administration of its largest news bureau. Our staff in Washington embraces over 85 people in-

cluding 17 on-air reporters, news producers, deskmen, camera crews, etc.

3. The actions of the House Interstate and Foreign Commerce Committee have already had a profound effect on our news operation. While our people continue to do their news gathering in a professional manner, I sense a growing apprehension over the actions of the Congress. There seems to be a general feeling that continuation of the present trend will result in an unseen Congressional presence in the newsroom, peering over the shoulders of journalists as they make their decisions.

4. While the nervousness expressed above is difficult to express in specific example, one manifestation is already seen in treatment of the very story of the Committee's actions against Dr. Stanton. While most hearings are covered briskly and professionally with editing done similarly, this one series of hearings was not. There was special caution expressed by various participants in the process, a nervousness that the story might be examined later. This was limited not just to the days of the hearings but to news coverage of the various principals. One day recently an interview with Chairman Staggers was analyzed far beyond its normal due because the producer and correspondent feared that the Chairman, who was fumbling as he read, might appear awkward if special care were not taken in the editing. These concerns, while they exist frequently in other cases, took on special meaning and unusual attention because they were in the context of this current controversy.

5. Haunting news producers, correspondents, and executives in the entire matter of *post mortems* of the editing process is that this will be done, if certain Congressional desires prevail, by nonjournalists whose motives are not proper presentation of the news but examination of raw material to see if the news presented could have favored one side or another as Congressmen would have them favored. Examination of film out-takes, even by fellow professionals, can frequently be a poor judge of the actual editing without much more information. Not the least of the elements in this process is the judgment as to the truth of statements on film. Sometimes there is other material from equally respected sources which causes one to avoid using certain quotes, or to use them in juxtaposition with other material. Ignorance of these and the many other elements that go into editing decision make examination of outtakes often a poor way to judge the final product.

6. There is a feeling which I share with many of my colleagues that outtakes of film will not be the end. Frustrated as investigators will become with this single source of raw material, they will seek a mandate to go beyond it to internal memoranda and individual memory of the editing process. The irony of all this is that one of our own checks and balances consists of frequent *post mortems* of story treatment. We are frequently checking back to see if a story couldn't have been done better or to make sure that our facts were correct (with resulting on-air corrections if needed.) Our *post mortems*, done by professionals with day-to-day concern with the story at hand, are often frustrating because the "evidence" is incomplete, the outtakes insufficient, the memories a bit hazy, honest men disagreeing.

7. Investigations *ex post facto* are injurious to a news organization. Each time we conduct our own examination of a single story or a documentary, we tie up many men for many hours. Each time government does this, in the acts of federal agencies or Congressional committees, the hours are multiplied and attentions distracted from the fundamental job of news gathering and presentation. It saps the energy of CBS News. There has been a great deal of this in recent years. Many resent the days spent in gathering material for replies to such government inquiries. Many resent even more the difficulty in catching the administrative eye for new projects because the news executives are embroiled in lawyers' chores.

8. When government agents are given the opportunity to come into the newsroom and make these investigations in person and with frequency—the inevitable end, as I see it, of the present push for examination of nonbroadcast material—then the greatest damage of all will be done. Courage is the essential ingredient of my craft. It will be replaced with caution. Public service is the heart of what attracts good men to journalism. It will be blunted with concern for the intrusions of investigators and inquisitors. I am convinced that the end result will be the loss of most good men. They will run for newspapers where the First Amendment is yet to be corrupted. Those who remain will no longer operate freely.

9. We see growing evidence of the impact that the actions to date have already had. This week I was told of a rumor circulating among reporters and Congressional press aides on the Hill. This rumor holds that a news source with a particularly controversial item wanted to approach CBS but decided not to do so because "CBS is in plenty of hot water with the Congress and would be afraid to touch it". I don't know if the story is true and I would hope that we are not yet fearful of controversy, but the mere fact that so many of our colleagues and Congressional news sources are willing to re-tell if not also believe this story is indicative of a serious problem.

11. Broadcasting has many checks and balances against errors or even fraud. If CBS offers one version and other networks and the printed media offer another, CBS is suspect. If this happens enough, CBS has damaged its credibility and will lose its audience. To embrace a policy of news distortion is to invite one's audience to leave. CBS News has its strength in the fact that its audience has not left, it is the largest in broadcasting. People believe us because we have earned their faith. If people in the audience, if officials in the CBS structure, if the newsmen and executives of CBS affiliated stations, question anything we do, they let us know and we take such inquiries seriously. More than that, our own people are encouraged and engage constantly in criticism of our product. We consider that most seriously as well. There are plenty of checks and balances even without the Fairness Doctrine. If these all failed, that Doctrine itself provides ample opportunity for contrasting views.

12. The ultimate loser if broadcasting can no longer engage in journalistic freedom is the public. The Congress itself will also lose because a cautious television may do an individual lawmaker no damage today but neither will it help him correct the errors of others tomorrow. His constituency, which is also ours, relies heavily on television for its news. The health of a democratic state relies heavily on an informed electorate. Information flourishes only when there is a multiplicity and diversity of news sources. A crippled television will inhibit and infect the flow of information.

13. A final and personal word. After over two decades of service in broadcast journalism, my zeal for my craft remains high and my respect for my colleagues boundless. It is a tough job they do and they do it well. The days of yellow journalism are long gone. Today's news reporting is of a higher quality than ever before. The sense of honesty and high scruples of all journalists today, not only shared by but I suspect heavily influenced by broadcast journalists, is unparalleled in our history. It is because of that and because I have witnessed it first hand from the inside, that I bitterly resent the charges by Chairman Staggers of "calculated deception" and "deceit". My colleagues are professionals in their craft and it is a high calling. If there were deception, deceit, fraud or even the merest fudging of the truth, they would speak up strongly and forcefully. They now do when they suspect even honest error. I dread the day when they fear to speak up. This effort on the part of the Congress brings that day closer.

STATEMENT BY MARVIN KALB

I have been diplomatic correspondent for CBS News, a division of the Columbia Broadcasting System, Inc. since 1963. I have also been the CBS News Moscow Bureau Chief for three years—from 1960 to 1963. After joining CBS News in 1957, I worked as writer, researcher, editor and reporter. My job has carried me to news stories around the world: Vietnam, several times; Eastern and Western Europe, often; the Asian Subcontinent, a few times; the Middle East, Africa and the Caribbean. I have written four books: three on Russia, one on how the United States got involved in Vietnam; and numerous magazine articles. In addition, I served as Press Attache at the U.S. Embassy in Moscow in 1955 and 1957.

In the course of reporting on diplomatic affairs, I have become increasingly persuaded that my independence as a newsman is my greatest asset. When I returned to Washington in 1963, after working in Moscow for CBS News, Edward R. Murrow, a former colleague who was then serving as Director of the United States Information Agency, told me: "Stay as skeptical of the pronouncements of your own government as you obviously were of the pronouncements of the Soviet government. Stay independent of governments, and you will stay free as a reporter." I have never forgotten Murrow's advice. To me, it cuts to the very heart of the current controversy between Dr. Stanton and Congressman Staggers. The West Virginia congressman would have us forfeit part of our freedom as professional radio and television newsmen—the freedom to edit our news reports. Freedom in this area and in others is indivisible. Lose part of it and you have taken a long step toward losing it all.

Discretion is the essence of diplomatic reporting. If a State Department official, dealing in highly sensitive information, part of which he wishes to keep from the Congress, say, U.S. clandestine support of anti-communist guerrillas in Laos, if he were to agree to do a television interview (an unlikely event, but it happens), he would be even more circumspect than usual if he realized that the entire film record, including his "deep background" chitchat preceding the formal interview, or a misspoken thought, or even a simple slip of the tongue, might be subject to congressional scrutiny. In fact, I suspect he might not even do the interview. It is widely believed that much of the State Department's work—the White House's too—is absorbed with the questionable chore of presenting policy in such a way as to avoid "Capitol Hill" scrutiny or criticism. To legislate congressional access to the "outs" of interviews with "executive branch" officials would not only intrude into the functioning of TV newsmen, converting them, against their will into conduits between two supposedly independent branches of government, it would also drastically reduce the reporters access to the executive branch and his credibility in the long run with the legislative branch.

Our out-takes are, in their way, a newspaperman's notebook. Congressional committees have no right to demand a reporter's notebook; nor should they have any right to demand our out-takes.

Perhaps because I lived in Russia for five years—two years, working for the U.S. Embassy; three years, as a correspondent—I have become deeply impressed by the distinctions between an open society and a

closed one. One such distinction, endowed with constitutional legitimacy by the First Amendment, is a free press—newsmen and their organizations, functioning independent of government control but responsible for reporting the news with objectivity and without partisanship. If a Congressional committee, by its actions, begins to eat into the operations of a free press, thus running counter to the clear intent of the First Amendment, then it must take upon itself the responsibility of justifying the need to abridge a constitutionally-endowed right, thus tragically and unnecessarily narrowing the distance and eroding one of the distinctions between open and closed societies.

I am also bothered by a practical matter. How does the Committee intend to legislate "truth?" By what Yardsticks? Political? Or purely technical? Does the Committee intend to station a staffman in a network news office to insure that the Committee's standards are applied in the editing of daily news stories or occasional documentaries? I cannot believe any committee of the Congress wants to get into that business.

CBS news makes mistakes, I am sure. It would be foolish to claim or assume infallibility in people or organizations. We in television news know our errors better than anyone. There are strict standards, according to which we try to operate. Non-calculated deviations may occur. But there are standards, and they are ours. To impose standards from outside is to fly in the face of the First Amendment. I recall a recent comment by former Secretary of State Dean Rusk. "President Truman used to say, 'if a man does not make mistakes, let him put on his wings and fly away'."

Congressman Staggers alleges "deliberate distortion" in "The Selling of the Pentagon." He has been encouraging his colleagues to see a conspiracy on the part of the "media" well beyond this one broadcast. He sees the "manipulation of the ballot box," "past proof of fraud and deceit" and the "art of cut and paste." It would appear that he describes too much cunning and machiavellian genius to us—and therefore to a process that is too haphazard, often too rushed, sometimes guileless and thoughtless, combining the immediate needs of the news with a sense of timing and drama, and pushed always by the tyranny of the clock (broadcasts start on time in this society) that, taken all together, become the rule rather than the exception. Congress should be judging the rule rather than the exception.

Finally, it is probably fair to say that our society is undergoing extraordinary pressures at this time, many produced by the nation's involvement in Vietnam, and by the powerful currents of racial adjustment and change. At such moments in history, when Congress is struggling to reassert a more clearcut role in the making of foreign affairs; when 18-year-olds become the voting equivalents of middleaged, mature men and women, though their outlooks and their needs may be startlingly different; when a sad spirit of deep divisiveness pervades our national discourse and when distrust of government and institutional intolerance of people tend to crowd our better instincts, then clearly we would all be better off if we returned to original principles, which have served the nation magnificently for 195 years. One such principle, obviously, is the First Amendment—and its guarantee of a free press: with all its faults, it is still the best watchdog on the wondrous workings of government but only if it is allowed to stand independent of it.

STATEMENT BY BOB SCHIEFFER

1. My name is Bob Schieffer. I live at 7510 Maple Avenue, Chevy Chase, Maryland. I am the CBS News Pentagon Correspondent. Prior to employment at CBS News, I was a reporter for the Fort Worth Star-Telegram, in Fort Worth, Texas, and also served three years as news anchorman at WBAP-TV, the NBC television outlet for Dallas-Fort Worth.

2. I am currently responsible for preparing news reports about the department of defense for broadcast on CBS. Allowing the government or the congress to examine film out takes from my news reports would seriously impair my ability to report such news. I consider this unused film a part of my "reporter's notes" and as such, I feel it is imperative that such information be kept confidential if I am to retain the trust and confidence of my news sources.

3. Knowledge that this unused film is open to inspection by those outside CBS News would inhibit my news sources, discourage them from granting interviews, and in some cases, cause serious embarrassment or, in fact, result in irreparable damage to their careers.

a. I could no longer guarantee news sources that CBS News would exercise complete control over how and where their remarks would be seen and heard. During the course of an interview with a ranking U.S. officer, he disclosed on film certain facts which upon reflection, he felt entered a highly sensitive area and that disclosure of this information might cause diplomatic embarrassment to the United States. I was asked not to use that portion of the interview and complied with the request.

b. Prior to an interview with a U.S. Senator, I explained that during a certain portion of the session, the cameraman would be photographing long shots and that the sound recorded during that portion of the interview would not be used for broadcast. At that point, the senator burst into song and did an imitation of a radio Beer commercial. Use of this film clip during a "congressional investigation" would, at the very least, cause untold embarrassment to the senator.

c. People sometimes make simple errors of fact or mistakes during interviews. Discovering the error later, they request that the portions of the interview in error not be used. Making these unedited interviews available to outside investigators would leave sources open to ridicule and scorn. This would no doubt cause them to have reservation about granting interviews.

4. In some cases, providing film out takes of interviews to outside sources would give them an advance look at stories still in preparation. It is not uncommon to ask news sources about separate topics during the course of one interview session. During a recent interview with Senator Edward Kennedy, I asked him to comment on two subjects—prisoners of war and the recent disclosure of the Pentagon Papers by the New York Times. His remarks about the Pentagon Papers were used that night on the evening news. His remarks on the prisoners were carried on a CBS News Special Report some days later. Investigators who demanded outtakes of takes of the Evening News interview would have received a bonus—the complete interview concerning the prisoners of war which still had not been broadcast.

STATEMENT OF BURTON BENJAMIN

1. I am a Senior Executive Producer for CBS News, a division of the Columbia Broadcasting System, Inc. Prior to joining CBS News in December, 1956, I was a general assignment reporter for United Press and for NEA Service, Inc., the Scripps-Howard feature service, in Cleveland and New York; a free lance writer for national magaines; a producer, writer and director of documentary films for RKO-Pathe, Inc.; a writer for "Kraft," "Robert Montgomery Presents" and other television programs.

2. For CBS News I have been producer and executive producer of the Twentieth Century, for which I produced 219 broadcasts over nine years and which was the longest-running documentary series in the history of networ' television. I served in the same capacity for the 21st Century and World War I series. I produced such CBS News broadcasts as "Young Mr. Eisenhower," "Justice Black and the Bill of Rights," and the series with Former President Lyndon B. Johnson. I have won virtually every award given by my profession.

3. My work as a producer for CBS News has taken me all over the world, generally with a film-camera crew in active production. I have a professional working knowledge of all aspects of television from photography in the field to the editing, writing and recording of broadcasts.

4. I have had more than 20 years experience in that most vital of all films areas—the editing of motion pictures. While producers do not physically edit the film, they supervise the editing and it is their most profound concern. This is not entirely an esthetic matter, although artistry is involved. In broadcast journalism it is a matter of fairness and balance and impartiality—the *sine qua non* of journalism.

5. All journalism involves condensation. No newspaper can present every interview in its totality; every news story in its most infinite and inconsequential detail; every event no matter how trivial. Total recall is not journalism; it is a recording device. The best newspaper is not necessarily the fattest. Many American newspapers, and especially the British press, have mastered the art of editing—of presenting the essence—to a high degree. And television, limited by the most rigorous of masters, the clock, has enhanced this journalistic art with its own arcane, and frequently misunderstood, skills.

6. As a working producer in broadcast journalism I pride myself in the use of these skills—skills which I began to learn as an editor on my college newspaper and developed in my professional life. I take my journalistic responsibility as solemnly as any other profession; it is my Hippocratic oath. I would no more distort what someone has said or done by misusing the editing techniques than I would lie. I consider this to be a sacred responsibility. And my experience at CBS News assures me that any producer who attempted to subvert or distort his material would not long remain in our employ.

7. Why then the apprehension about some sort of official check of what you have done—a hand-on-the-shoulder in the editing room? I believe this would have a devastating effect. It would destroy the journalist's confidence and demean his professional skill. It would stultify decisionmaking—and in television that process must be swift and certain. It would vitiate the final product, for a producer, knowing that every decision was subject to official review, would tend to take the easy route: make no decisions, certainly no tough decision, and perhaps retreat from the arena entirely. It would, in my view, eliminate the appetite for investigative reporting. Much of the investigation has traditionally involved the government. The proposed system would involve a review by the very people you are investigating. No producer would face that prospect with equanimity. The result would be a drying up of this kind of reporting which has provided a noteworthy service to the American people in television's brief, but productive, history.

8. My experience in countries where the press and television are subject to official review and approval is hardly reassuring. The more the control the poorer the journalism: it is an axiom that anyone who has traveled in the world knows well. What is at stake is the vigor and integrity of the press, and I am not aware of any country in the world where government supervision and control have improved those vital qualities.

Dated: July 9, 1971.

BURTON BENJAMIN.

STATEMENT OF MIKE WALLACE

I am a staff correspondent for CBS News, a division of Columbia Broadcasting System, Inc., and I have been employed in that capacity since 1963. Prior to 1963, over a period of approximately 20 years, I worked as a news reporter and commentator for the Chicago Sun, The Chicago Sun-Times, Station WMAQ in Chicago, for various television and radio news organizations in New York and as a columnist for the New York Post.

My chief assignment at present is to the CBS News television "magazine" broadcast SIXTY MINUTES. That assignment has involved coverage of politics, civil rights, the defense industry and other subjects of national interest, as well as travel to South Vietnam, Israel, Egypt, Nigeria, Northern Ireland, and other countries. I have participated in various news specials and CBS REPORTS.

Based on my experience in investigative newsgathering, I am convinced that if the asserted power of a Congressional committee to subpoena "outtakes" is confirmed, the result would be to handcuff the broadcast news reporter and effectively neutralize broadcast news organizaitons as elements of the free and vigorous press contemplated by the First Amendment.

The stated purpose of the subpoena issued by the Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee is to obtain information from which the Subcommittee could judge just how fairly, how accurately CBS News put together "The Selling of the Pentagon."

This subpoena goes to the heart of the issue of whether broadcast journalists are entitled to the same First Amendment protections as are the journalists who work in the print media against whom Congressman Staggers acknowledges such a subpena could not be enforced. The issue is as plain as that. But the far reaching implications of the watchdog function asserted by the Staggers Subcommittee may be illuminated by considering the impact a Congressional watchdog might have had on two stories produced for SIXTY MINUTES, the Peabody Award, Emmy Award winning broadcast on which I currently labor.

Last September, we broadcast a report on Cuba following a three week stay there. We were the first stateside television crew admitted to that country in almost two years and our report catalogued, objectively, successes and failures of the Castro government over that period. Some critics felt that we had come down insufficiently hard on Fidel. That was their right although, on the facts, I am convinced they were wrong. Were the Staggers Committee, or any other government body, to have the right to look over our shoulder as "editor after the fact," it seems not unreasonable to imagine they would want to call in all our Cuban film, my notebooks and those of the producer, and conceivably have a face to face discussion with us about the way we edited our story. They might well call upon us to justify our editorial judgments about the status of the black man in Cuba, for instance, or the productivity of Cuba's infant steel industry.

Another story on SIXTY MINUTES this year was a profile of Spiro Agnew, from his childhood on up to the date he became Vice President. While the Vice President, we are told, did not see the broadcast, Mrs. Agnew did and let her displeasure be known. A Republican Congress might have been very interested in what complimentary things were left out of the broadcast; on the other hand, if they clearly had a right to inspect our "outtakes," a Democratic Congress might have been interested in whether uncomplimentary things were excluded. The possibilities, indeed the probabilities, are endless.

The untenable situation into which the Subcommittee's assertion of authority over broadcast news would lead us is illustrated by the proposals which they have made in the recent past. Congressman Staggers has in fact introduced legislation to make it a criminal offense to engage in "falsification" of news broadcasts. The dissenting minority to a Subcommittee report two years ago, which contained a number of proposals to restrict the freedom of the broadcast press, stated that "[t]he practical effect of trying to legislate a standard of 'truth' would place in the hands of the government a weapon over the press that is common in totalitarian countries." The danger then in the current assertion of authority by the Subcommittee is that it will get the government, for the first time in the history of the Republic, into the business of regulating news. That, I suggest, is not the way to insure the "truth" in the news the American public hears and sees.

Thus far, we in broadcast news have gone about our business in the belief that we are protected by the freedom of the press. It is inconceivable that the men who wrote our Constitution and the Bill of Rights, had someone told them we would someday communicate ideas and information by electronic means, as well as by the print press, would not have made clear that freedom of the press protected broadcast news.

Dated: July 9, 1971.

STATEMENT OF DANIEL SCHORR

I am a news correspondent for CBS News in Washington, have been a CBS News correspondent in the United States and abroad since May, 1953, and before then worked for news agencies and newspapers, including the *Christian Science Monitor* and the *New York Times*, starting in 1937, so that my 34-year career in journalism is roughly evenly divided between print and electronic journalism.

While I am aware that this statement will be used to support my employer's case against official surveillance in any form of the unbroadcast part of our work—a principle with which I am wholly in accord—I should still try to treat this matter with the same restraint and lack of exaggeration that I seek in my journalistic work.

The most serious problem of all would be the effect of official inspection on the journalist himself. Let me say that many of us are frequently dissatisfied with how our stories are edited—mainly because we are not given enough time. The process by which a story is prepared for broadcast is complex, performed under tensions of time and competing stories, with constant strains of fending off pressures to compress the stories further and further. Among those engaged in the process, there are often professional disagreements about how to do it, and sometimes whether it can be done at all within the allotted time. In a cinematic medium there are short-cuts which are employed to save time while preserving the essence. To try to compare an edited product with the raw material in retrospect without realization of the pressures and needs of the moment is to invite oversimplified and erroneous judgments.

To have to live with the constant prospect of such judgments being made would be to live with a form of subtle but real coercion. I should like to think that it would not affect me, for I take professional pride in resisting pressures from any source. But I cannot be sure. Would I make unconscious hedges against second-guessing? Or, alternately, would I lean over backward to persuade myself that I am not being intimidated? I do not know. I know only that the potential for such surveillance would stand over me like an incubus, and I would no longer feel like an independent professional.

There are occasions when my work would be directly inhibited by the knowledge that unedited material would be available for official surveillance. As one case in point, in November, 1970, in the course of investigating problems of school segregation in Boston, I sought to interview a housewife who was sending her child to school outside the local school district, but was reluctant to explain the reasons if she could be identified for fear of reprisals from Blacks in the neighborhood. We agreed to film her in such a way that she could not be recognized, and to withhold her name and address. But some of our conversation, not meant for use, proceeded while the camera was running. And it would have been possible to identify her from "outtakes".

Such examples of confidential material on films are not frequent, and presumably precautions could be taken against having material on film which is not meant for possible broadcast. It would be a hindrance to have to guard against anything confidential being recorded on film, though perhaps not a grave one.

Also serious, to my mind, would be the psychological effect on interview subjects of the awareness that all the film would be potentially available for official inspection. In Eastern Europe, for example, I have been involved in arranging interviews with Communist leaders, including Nikita Khrushchev. They tend, in any event, to doubt the independence of the press in America, having no analogy in their own countries. And the knowledge that uncut interviews were available to any official body would simply reinforce their suspicions about us.

I believe that there would also be inhibitions on interview subjects in the United States and other non-Communist countries. We frequently assure our interview subjects, in the interests of spontaneity, that they need not worry about misspeaking because they can, whenever they wish, start their statements anew. That kind of spontaneity would be hindered if the subject felt that his unintentional statements would be available for official inspection.

Mr. BROYHILL of North Carolina. I thank the gentleman from Arkansas.

Mr. Speaker, the gentleman from California (Mr. Moss) has 60 minutes on a special order and I am going to yield back the balance of my time in order to give him the opportunity to use a part of this time.

THE PROPOSED CONTEMPT CITATION AGAINST MR. FRANK STANTON AND CBS

The SPEAKER pro tempore (Mr. LINK). Under a previous order of the House the gentleman from California (Mr. Moss) is recognized for 60 minutes.

(Mr. MOSS asked and was given permission to revise and extend his remark and to include extraneous matter.)

Mr. SYMINGTON. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Missouri.

Mr. SYMINGTON. Mr. Speaker, it is asserted that the editing by CBS of its program, "The Selling of the Pentagon" was so flagrantly deceitful and injurious to a proper public understanding of the subject matter as to invite congressional inquiry. Congress certainly has a legitimate interest in preserving the integrity of usage of public airwaves and channels by their licensees. And as in other areas of legislative concern, it has a broad power to compel the production of infor-

mation it deems essential to its lawmaking function.

If we do choose to exercise that power as is suggested today, we must recognize that the underlying assumptions we make as to its reach will be subject to judicial review and possible reversal. So the first question to consider ought not to be whether the asserted power actually exists in this case but whether, on the perilous assumption that it does, it ought to be exercised in this fashion. Discretion may be the better part of congressional valor where the constitutional line to be approached is seen to divide us from first amendment territory.

Even assuming that the subject program was deliberately edited with such deceptive results as to invite our inquiry, the question then arises as to whether an absolute necessity exists to compel production of the outtakes in order to complete that injury. It would seem, in view of the availability for comparison of the full transcripts of the principally contested materials that no such overwhelming necessity is shown. Congress certainly ought not to compel production of information it already has. Nevertheless, we are told we must serve notice now, by asserting this power, that it exists, else we will lose it. But Congress cannot ever lose a power it has, much less power it never had.

Indeed, in a larger sense, any congressional initiative which springs from the premise that Government has the power to guarantee the "responsible" use of journalistic judgment springs from a false premise. Government is powerless either to render journalism "responsible" or to restore public confidence in it. Only the journalists have that power. Government can certainly erode public confidence in the press and other media, and one way to do so, paradoxically, is to announce that it has taken measures to keep them honest. Few would be reassured by such an assertion. In our society the Government and the press cannot at any given moment know precisely where their respective boundaries are. They must coexist in a state of dynamic tension. Maintenance of this delicate balance cannot be achieved by fiat or force any more than a fine watch can be tuned with a hammer. Does this place the public at a disadvantage? It will be temporary. The threat of public disbelief should hang far heavier over the media and its sponsors than any congressional subpena. No doubt public respect today for the media is at a low ebb. It would be inaccurate certainly to say the media need no apology, or that their apologists are in abundance in the Congress.

If and when their practices should invite governmental challenge, such challenge might be issued with better grace on behalf of some other aggrieved party than the Government itself. The first amendment problem is most acutely raised when the material to be censored or condemned is deemed injurious to the censor.

In 1861 President Lincoln wrote Thurlow Weed—

Do you gentlemen who control so largely public opinion, do you ever think how you might lighten the burdens of men in power—these poor unfortunates weighed down by care, anxieties, and resopnsibilities?

It is a wistful question, with sympathetic echoes in our time. But Lincoln did not confuse or equate his own discomfiture with public injury. Nor should we. An educated and vigilant citizenry is the best and perhaps the only defense against the broadcast of falsehood whether it emanates from a private source or a public one.

Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. I thank the gentleman for yielding. I thank him also for taking this time which, I believe, is so important to the House in considering an extremely important issue.

Mr. Speaker, I take the floor today with very serious concern about two conflicting matters with which we are confronted involving the subpena and the recommended citation for contempt of Congress by CBS.

As a matter of fact, these matters are of such importance that I have not come to my conclusion suddenly. Indeed, my conclusion today is not precisely this same as that of some of my colleagues who likewise oppose the contempt citation.

It seems to me that the power of this body to come by information that it needs for its legitimate purposes is a power of such grave importance that the body should not put itself in a position of jeopardizing that important authority of the Congress by treading at the very outskirts of its constitutional power in an area where the constitution authority of the U.S. House of Representatives approaches a protected area of power under the first amendment.

I would have hoped that we would not have confronted that kind of a crisis on the borderlines of our authority. And it is somewhat regretfully that I argue the case against the position of my chairman. I only do so in order to preserve the power, and not jeopardize it in a situation that it seems to me is the weakest possible legal case for exercising that authority and power.

Now, why is this the weakest case? There has been much said about the broadcast, there has been much said about deceit, there has been much said about information being put into other people's mouth—and, really I suppose that we are not here to debate the question about whether the broadcasts were fair or unfair, whether they were properly balanced or not properly balanced, but we are really here, it seems to me, to discuss the question of the extent that Congress may move in the direction of ascertaining the question of truth.

I do not know what position I would take if, for instance, the question we had before us here today was that involved in the broadcast that went over the NBC network involving the portrayal of a helicopter descending on a floe of ice, apparently a gun being shot from the helicopter, apparently the mother polar bear falling dead, and the little cub nuzzling up to the mother, and then the natural conclusion that this is the waste of our natural resources and an inhuman thing. And then when the outtakes are shown it is revealed that the shot was a tranquilizer; that the mother polar bear got up after she had been tagged by some conservation service, and the little cub followed her off.

Now, if we were in a situation in which that sequence could not be reached by any other power but this Congress' subpena power, and if that were denied, I believe that I would be in favor of exercising the power to subpena that information. If that information was not forthcoming and could not be arrived at in any other way I would be in favor of citing for contempt.

Why is this a different situation? And would it be permissible in the other case to get the outtake?

It seems to me because in such an example the entire sequence of events is a raw portrayal of news and the deletion of the sequel is to tell a false story. Just as if, for instance, the word "not" were blipped out of a person's statement.

Now we are not confronted with that situation here. If we were, I would tend to support the power of the Congress to get at that sort of information. But what we are confronted with here is the question of whether we should establish a congressional or a governmental standard of truth.

I have examined the two crucial items that have been brought up in this hearing. I have read the testimony, the Stanton testimony, and I find these two items seem to be the crucial items involved in this case.

One is the Henken testimony. Mr. Henken testified concerning certain policies of the Pentagon. The testimony he gave was cut and to some extent rearranged. It was not sequential and arguably the case that Mr. Henken wanted to make was not made in the strongest manner for him. He contended that when he was asked the purposes of certain Pentagon broadcasts, he included amongst those purposes the purpose of recruiting and that this was eliminated from his statement.

He also contended that a portion of his total statement which referred to the use of narcotics and certain racial problems in the armed services had been overly emphasized. But he never contended that anything which was stated in the broadcast was other than something he had said.

Now if I make a political speech and I take maybe 15 minutes to make it and that 15 minutes is recorded and then 2 minutes are broadcast, it is almost certain that I could find a better 2 minutes than will be taken out of my speech to go into a broadcast. I think there are very few of us who have not wished that we had the same power with respect to the selection of the broadcast material as we do with respect to a selection in the RECORD.

There has got to be somebody who exercises a certain degree of discretion with respect to matters that are put on the news—certain matters that are used in connection with a documentary. I suspect that there is hardly any one of us who would not have chosen a little

bit differently than did those who put together the particular broadcast.

The question is, Should there be an opportunity to establish a governmental standard of truth when the real question is merely a question of emphasis and of editing? In this area—in this narrow area—is there really any difference between the TV medium and the radio medium on the one hand and the newspapers on the other?

Dr. Stanton states that he did not think there was a difference and because he did not think there was a difference and because he felt that if the Congress were to impede selection by the TV and the radio media that such would be an infringing on his first amendment right.

I think he was taking an honest and reasonable stand.

I know it has been said here with respect to Colonel MacNeil's statement that words were put in Colonel MacNeil's mouth. It has been argued that this is more than the question of judgment with respect to selecting that portion of a broadcast that is to be used—that Souvanna Phouma had made a speech in which he said that if Vietnam should fall, Laos and Cambodia will fall—and that these words quoted from Souvanna Phouma which were contained in Colonel MacNeil's speech appeared to be what the colonel was saying.

I have checked that speech very carefully. Colonel MacNeil made a rather lengthy speech. He had some notes before him, notes which were in the ordinary sort of large type that a man can read while he is making a speech to an audience. The notes included two separate paragraphs, one including some statements obviously of Souvanna Phouma, and then another paragraph that merely referred to the domino theory that I have just described.

If a man were reading these two things in sequence, there would have been no way to tell where the quotes ended. But let me point out another thing about that speech. I have checked the whole speech through and I find in the speech a couple of paragraphs in which almost precisely the same thing is said in Colonel MacNeil's own statement. What he says in effect is that the domino theory, just as had been illustrated in Europe, also applies in Asia. If we do not do so-and-so in Vietnam, then such-and-such a result will happen with respect to other countries.

I defy anybody to listen to that sequence, to just have it read to him, and come out with the conclusion that that paragraph which has now been attributed to Souvanna Phouma—and I suppose it was his statement, though I understand it was a paraphrasing—but I defy anyone to tell exactly where the quotes ended and the colonel's speech began.

Besides that, since the colonel said the same thing at greater length at another place in the speech, it seems to me that anyone judging the speech objectively would have concluded that the colonel was saying what it appeared he said on CBS. There was no misrepresentation. There was a condensation of a very lengthy speech to fit it in a certain space.

Let me go a little further, and let us assume for the purpose of argument that the cutting and the replacement and the rearrangement of the speech was improper in both cases, that it should have been done in another way.

The question is, Are we as the U.S. Congress or as a committee of Congress to put ourselves in the position of judging what is truth in the area of editorializing and news production? That is not what the Red Lion case says. I have read carefully the brief of the very able staff of the Subcommittee on Investigation of the Committee on Interstate and Foreign Commerce, and they quote the Red Lion case and the NBC case as their primary authorities. Nobody for a moment denies that Congress has the authority to control generally TV and radio. Somebody has got to decide how these limited airways are to be used. Somebody has got to limit it, and somebody has got to judge between this body of material which may be of little public value and other bodies of material that may be important.

The point is, though, that none of the cases hold that Congress or the FCC or any committee of Congress has got consitutional authority to take a particular piece of news or a particular documentary and say, "Look, you did not portray this right. You must throw it in another light. You have deceived because you have not presented it in the light most favorable to the parties interviewed, in this case the Pentagon spokesmen.

That is the point. There is no question but that Government through its duly designated authority may later review the total product of CBS, NBC, or ABC under such laws as may be passed to do so.

Mr. MOSS. The gentleman from Texas (Mr. ECKHARDT) stated the truth, that CBS is a licensee of the Commission and each of its broadcast facilities must answer to the Commission for the conduct of CBS as a licensee, and the Commission has broad jurisdiction to inquire into whether or not the public interest has been served and is being served by CBS continually as a licensee of the Commission.

Mr. ECKHARDT. That is certainly correct.

Mr. MOSS. And under the Communications Act, the period of time on each of the facilities cannot be more than 3 years, so we insure a review of the broadcaster, testing whether he has met the need to serve the public and to utilize the spectrum in the public interest.

I yield to the gentleman to answer.

Mr. ECKHARDT. That is certainly correct, and, of course, the question of the fairness doctrine is not at all the question involved in a case in which a single program is being judged. The Red Lion case, of course, dealt with the fairness doctrine.

The Red Lion case does not authorize promulgation of an "official government view dominating public broadcasting." It recognizes that "such questions would raise more serious first amendment issues." That case decides only "that the Congress and the Commission do not violate the first amendment when they require a radio or television station to give reply time to answer personal attacks and political editorials."

Indeed, the Court recognized the value of "coverage of controversial issues," stating that if such were not given "the purposes of the [fairness] doctrine would be stifled." Indeed, the Court notes with favor the statement of Mr. Stanton in footnote 19 on page 393 of the decision wherein he stated that CBS is "determined to continue covering controversial issues as a public service, and exercising our own independent news judgment and enterprise. I for one, refuse to allow that judgment and enterprise to be affected by official intimidation." *Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367, at pages 393–4.

I would like to point out what the difference is in these two propositions. The Red Lion case never said that the FCC or Congress can look at a particular program and make an individual specific, judgment about the ideological weighting or balance of that program.

I would like to point out here too that though the statement I am making are opposed to the recommendation of the committee, I do not feel that the committee in its original embarkation on this investigation was wrong. I think that it went wrong when it began to look into the question of whether or not the specific program was a fair one. The chairman, at the commencement of the committee hearings, spelled out very properly a legitimate purpose for the committee to look into. He said:

> Clearly this raises important issues concerning the adequacy of the laws governing broadcasting. Present law and regulations do address the subject of deception, but they do so in a very disjoined and unorganized manner. Thus, sponsorship, if any, must be announced; mechanical reproduction, if employed in the broadcast, must be disclosed. These provisions apply to news programming just as they do to other types of broadcast. In addition, fraudulent and deceptive advertising and quiz programming is forbidden. All of these provisions of present law are of undoubted constitutionality. Furthermore, they are quite similar to the legislative concerns involved in the present matter.
>
> All of these provisions reflect an understanding that the public has a legitimate interest in knowing the relevant circumstances under which material is broadcast.
>
> With this in mind, and recognizing that existing law might not be fully adequate to serve the public interest, this subcommittee determined to inquire into the serious allegations raised about the "Pentagon" documentary.

There is no question about the legitimacy of the concern of the committee as enunciated by its chairman. *National Broadcasting Co.* v. *U.S.*, 319 U.S. 190 (1942); *Red Lion Broadcasting Co.* v. *F.T.C.*, 395 U.S. 267 (1969), support these propositions.

The question is whether or not this legitimate concern can be pursued as far as is sought here without impinging upon freedom of the press.

What happened, as I have described, is these two major parts of the inquiry were answered. They were settled. The committee has the transcript. It has the transcript of Mr. Henkin's interrogation. It knows precisely what was done with

respect to the outtakes. It knows what went on the air. It knows where these various portions of that interview were taken from in the total program.

As a matter of fact, the committee staff has done an excellent job of showing us exactly where they came from.

This may be good or bad. It may call for legislative action. But the point is, we have got the facts.

Mr. MOSS. Is it not true that the facts just mentioned have been placed in the CONGRESSIONAL RECORD?

Mr. ECKHARDT. The facts concerning the Henkin interview were placed in the RECORD by the distinguished chairman of the Armed Services Committee. We have the transcript in the CONGRESSIONAL RECORD. Of course, the committee has the film. I saw it the other day. All I have to do is sit there with a transcript in my hand and with the guide that the staff has prepared and I can see precisely what was said and what was left out.

Now, with respect to the MacNeil statement the same is true. In that case, instead of having the transcript, the committee has the original speech notes of Colonel MacNeil and has the same analysis with respect to what portions of the speech were used and what left out.

But, really, that speech raises no question at all. Nobody, I believe, contends that because the colonel made a speech that lasted maybe an hour the documentary had to include his whole speech. There were not questions and answers. It was simply boiled down to a short statement and was broadcast. As I have stated before, there was nothing that was not in the substance of his own expression that was attributed to him.

Mr. MOSS. I yield to the gentleman from Rhode Island.

Mr. TIERNAN. I thank the gentleman for yielding.

This is one of the basic points the gentleman has been trying to hammer home, that under the consideration of the right of the committee to know, if they vote themselves without that additional test, merely the subpena to CBS and the president without any additional evidence, the situation might be totally different so far as the gentleman is personally concerned.

Mr. ECKHARDT. That is correct. Of course, it would be another case and would need to be studied more deeply. My immediate reaction would be if the speech of Mr. Henkin had been made extempore, and had there not been a transcript of it at the time, and had there been no way of determining how exactly it was cut and rearranged, and had the committee's inquiry not been directed at the judgment of the weight to be given to the documentary, and had the committee not been concerned with anything but the means by which it was rearranged, I would be inclined, if the committee specifically described what it needed to have and could not get, to feel the committee should have it.

Mr. MOSS. I yield to the gentleman from Rhode Island.

Mr. TIERNAN. I think the gentleman in the well, when he spoke previously, at the time the gentleman from North Carolina held the floor, was making the point that we saw a development from the first subpena to the amended subpena to the statement with regard to the scope of the committee investigation and saw a recognition on behalf of the staff of the difficulties involved in the approach that they were taking. The gentleman made that point earlier this afternoon. But it is worthy to note that there has been an attempt to improve the posture as it comes to the floor of the House. I am sure if this is reviewed by the courts, that will be one of the key items. I think that should not be overlooked by our colleagues tomorrow.

Mr. MOSS. An additional item should not be overlooked, certainly, which is the fact that no one charges CBS with violating any law, regulation, or order in the editing of the "Selling of the Pentagon." It is not necessary that we agree with the program or that we like it or dislike it. Clearly they violated no rule of the Commission and no law of the Congerss, as a matter of fact, as the gentleman from North Carolina (Mr. BROYHILL) has pointed out. He placed documentation in the RECORD in connection with his own remarks which showed on June 21 that the Federal Communications Commission supplied the committee with documentation to show that CBS had complied with the fairness doctrine in all respects, affording those who were critical of the program an opportunity to have their further views aired.

Mr. ECKHARDT. Will the gentleman yield further?

Mr. MOSS. I yield to the gentleman from Texas.

Mr. ECKHARDT. It seems to me what happened in this hearing is that the hearing commenced on the right note, with the intent to find out what procedures should be used to regulate certain editing processes, for instance, to develop; some means of providing some kind of a blip or signal which would indicate where material was left out. Then it sought to find the outtakes, and in effect it got them because the committee has the transcript. However, so hot was the committee on the scent of what it considered to be a basic evil that it went beyond its original purpose. I have nothing but the highest respect for my chairman and for his carefully limited statement on page 2 of the committee transcript where he said:

> As most people know by now, the program was controversial. For one thing it provoked the criticism of those who thought it was unduly biased against the public affairs efforts of the Department of Defense.

Then he said—and I think this is absolutely true and extremely important—"I scarcely need repeat neither this subcommittee nor its chairman has any interest in entering into this aspect of the controversy." They have no interest in weighing the particular bias or direction of the investigation. But the difficulty is that the committee's own counsel on page 40 of the transcript seems to be going in the opposite direction. He is talking about the Chicago convention here and comparing this matter to that convention. He says, "the investigation that was conducted by this subcommittee on the Chicago convention I think by its terms did address a number of allegations—in fact, as the staff report shows, a number of the allegations were prejudicial editing and selective inclusion in the broadcast of material and unfavorable to the Chicago administration or to the police or what have you that those were two of the specific allegations that prompted the subcommittee's inquiry." Then he goes on in questioning Mr. Stanton and says, "Do you think that everything people saw and heard on the 'Selling of the Pentagon' is exactly what it purported to be?" He asked that question about five times. Mr. Stanton says: "Well, I believe that the broadcast was fairly edited." Then the counsel said that he wanted a yes or no answer.

And, then, there is considerable further discussion. Certain members of the committee then get into the question of what is truth and what is fact and what is balance.

The statement is made by one Member:

> I will come back to you. "—in a government inquiry, expressly intended to determine whether this or any other CBS news report meets government standards of truth."
>
> Now when you use the words "government standards of truth" you are trying to imply, I believe at least, that you are saying that we are trying to set up Government censorship or Government control, that we are using Government standards of truth. Now who else is going to pass judgment on these matters if it is not the Government? We representing the people?

And then note this:

> Who else is going to pass judgment on these matters if it is not the Government?

Mr. Speaker, my answer to that is: Nobody other than the people.

What the Constitution says is that you let broadcasters with respect to the internal content of news matter print their version of it, and newspapers will print their version, and other broadcasters their version and, ultimately, it is the people who choose. You do not set up governmental standards in the committee.

Mr. MOSS. On the question of governmental standards, until the first of April of this year I have had for 16 years the privilege on chairing the Subcommittee on Government Operations. During the course of those 16 years I encountered many gradations of Government truth in the information made available to the people. So, if there is a discernible standard of truth in the Government I would like to know what it is. I have seen many and varied standards and some of them did not meet my most liberal definition of what might constitute the truth.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I would be happy to yield to the distinguished chairman of the committee.

I would like to say, Mr. Chairman, that few things in our many years of close association have caused me greater concern than having to determine upon the course I have here in opposing the position you have taken and the position the majority has taken on the committee.

I would like to say to you and every Member of this body that it is a matter of personal conviction based upon a searching analysis which is causing me to reach the conclusions I have reached.

Mr. STAGGERS. Thank you, my friend.

Would the gentleman agree with me that there have been pressures put on the House and on the gentleman as well as on other Members of the House?

Mr. MOSS. I would assume that pressures, as they historically do it in the legislative bodies, go both ways.

Mr. STAGGERS. It could very well be, but I mean outside pressures by big corporations as well as others who perhaps have billions to spend to influence Members of Congress.

Has the gentleman seen any evidence of it?

Mr. MOSS. I have not encountered it, Mr. Chairman.

Mr. STAGGERS. I wanted to ask the gentleman from Texas, when he said that the people would take care of it, is not the gentleman a representative of the people? Is not the gentleman sent to Congress to take care of these matters and not the people who may live on one of my hills in West Virginia 20 miles from a telephone? He expects me as his Representative in the Congress of the United States to take care of his affairs.

With reference to this statement on governmental truth—and I do not know who made that; certainly I did not make it because I do not believe in such things. I believe it is hard to tell many times between what is black and what is white because we have so many gray areas.

I do not believe I as chairman have ever said that I wanted to censor anything that they, the TV people, have said or planned to say.

The presentation of the Pentagon in many ways could have been one of the greatest documents of our time if they had not lied—and they admitted it; it has been shown under oath—and you as a representative of the people should say that that will never happen again because it is under Government control.

When you tell the people that this is the truth in a documentary that took 11 months to prepare and, perhaps, someone sat down in a dark, deep room and said, we will take these questions and answers and make them say things they did not say; we will put the quotation of someone here and say certain things, when he did not say it but when he was actually saying it to someone else.

I ask you, as a representative of your people, and you come from Texas, are the people of Texas going to come up here and change the law? No. It is going to be you—and you swore to uphold the Constitution of the United States and to defend it in every way, and to represent your people when you took that oath of office.

And so am I here, to represent my people, and I intend to do it. And when I am a chairman of a committee I intend to do it to the best of my ability for all of the people of this land as long as I am here.

Mr. Speaker, I thank the gentleman for yielding.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Washington.

Mr. ADAMS. Mr. Speaker, I do appreciate very much the remarks that the gentleman from West Virginia, the chairman, has made. I would hope that tomorrow we can perhaps have an orderly debate. I understand from the Parliamentarian that we can have a unanimous consent request that would divide the time for purposes of debate only. And I thought while the gentleman from California (Mr. Moss) was here, as well as the gentleman from North Carolina (Mr. BROYHILL), and some of the principal or senior Members who are involved, that perhaps we could arrange so that tomorrow we could ask unanimous consent at the beginning of the debate to say, yield 10 minutes to the gentleman from North Carolina (Mr. BROYHILL) and 10 minutes to the gentleman from California (Mr. Moss) and whatever time the chairman, the gentleman from West Virginia (Mr. STAGGERS) should desire to take, and then we would be able to take the balance of the time as we went along for orderly debate purposes.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from West Virginia.

Mr. STAGGERS. I thank the gentleman for yielding to me, and I just want to say that I want to be fair, and I always try to be fair. I do not think that the gentleman from Washington (Mr. ADAMS) can ever state that I deliberately tried to be unfair in my committee.

Mr. ADAMS. I appreciate that.

Mr. STAGGERS. Although I might state that I have been so many times opposed to different issues that I certainly have been tempted to do so, as every human being is. I will be fair tomorrow, and I will do just exactly what the gentleman from Washington has requested.

Mr. ADAMS. If the gentleman will yield further, I appreciate that very much, Mr. Speaker, and I think that will be of great assistance for an orderly debate.

And, Mr. Speaker, I do want to say to the gentleman from West Virginia (Mr. STAGGERS) that he as a chairman has been very fair to us in the committee.

Mr. STAGGERS. I thank the gentleman.

Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Texas for a response.

Mr. ECKHARDT. Mr. Speaker, I would like to respond first by saying that I recognize the chairman's intent in the direction that he stated it, and I applaud it. I think that he is absolutely right in being concerned about the processes by which programs of this nature such as "The Selling of the Pentagon" are produced. I think that as long as it remains a question of what went in and what went out, the question of passage of laws that might correct those matters is extremely important. I recognize that the chairman's concern was in that direction, and that it is a legitimate concern, and I say that that is what we should be concerned about. But in answer to the question of whether or not I determine the truth for people, my answer is no. My answer is in the language of Judge Learned Hand who said:

> Our democracy rests upon the assumption that, set free, the common man can manage his own fate; that errors will cancel each other by open discussion; that the interests of each, even when unguided from above, will not diverge too radically from the interests of all. That may be an illusion; it may be, in the words of Ortega y Gasset, "a discipline too difficult and complex to take firm root on earth." But still we do profess it, and while we do, let us not disguise from ourselves that, so far as we set up official orthodoxies, however vague in content, we falsify the underlying presupposition of our state.

Let me say quickly that there is no question but that this Congress has the responsibility of devising means of providing a forum for all conflicting interests. When those conflicting interests are permitted to speak their piece, and those conflicting expressions are frequently highly controversial, as was "The Selling of the Pentagon," when they are permitted to speak their piece, then we, along with other people, not as Representatives, but as citizens of the country, will make the proper determinations.

We are not to make the judgment of what is true; that must be their decision—not ours.

I thank the gentleman from California for yielding and for his great patience.

Mr. MITCHELL. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman from Maryland.

Mr. MITCHELL. Mr. Speaker, I rise today to defend the first amendment, not to enlarge it, not to extend its scope, not to apply its spirit to "symbolic speech," but purely and simply to defend its essence: the freedom of journalists to report upon and criticize the Government free from governmental control.

If any soldier in the endless struggle to safeguard our liberties thought that the battle for press freedom had been won, that this strongpoint at least was secure from attack, events of the last few weeks will have disabused him of that notion. We have seen the executive branch launch a massive assault against the very center of our position: The prohibition against prior restraint. And now we see a committee of this House making harassing attacks upon our flank.

My colleague, Chairman STAGGERS, claims compulsory process to force television newsmen to produce materials used in the making of a public affairs broadcast. He claims a congressional responsibility to protect the public from "manipulation" and "deceit." I challenge both these claims.

I submit that "outtakes" and similar materials are privileged against the subpena power. The Subcommittee on Investigations, according to the statement which its chairman circulated and inserted in the RECORD, would make a distinction between cases in which the courts have upheld the confidentiality of reporters' notebooks and the present case on the grounds that only the sources of news are privileged, not the actual note-

books or outtakes. But I submit that the privilege extends, not to the sources or the notebooks or the outtakes in themselves, but to the news-gathering process of which they are a part. As the ninth circuit court of appeals held in the Caldwell case, sources must be protected in order to protect the right of newsmen to operate free of the fear "that they will be required to submit to interrogation." That court held that "the first amendment guards against governmental action that induces self-censorship." Does any Member doubt that the threat of congressional investigation into news gathering will tend to check the boldness of television news teams in delving into controversial issues?

The subcommittee tells us that the controversy which rages over "The Selling of the Pentagon" "is not the concern of the subcommittee." But does any Member believe that the storm of protest, both on the floor of this Chamber and in other places, evoked by "The Selling of the Pentagon," had nothing to do with the subcommittee's anxious delving into its preparation? Could not CBS News have avoided all this difficulty by directing its attention to a less volatile subject, say, an appreciative study of the architecture of the Rayburn Building?

Now, I do not wish to suggest for one instant that such a study would not be both interesting and valuable, but the use of the subpena power as an encouragement to journalistic timidity is precisely the kind of restriction on press freedom which the framers of the Bill of Rights forbade, and rightly forbade, the Congress.

But the threat to our freedoms posed by the means which the subcommittee wishes to use is insignificant when compared to the threat posed by the ends for which it wishes to use them.

The subcommittee speaks of "laws which Congress might enact directed against calculated manipulation of the news." Now protecting people from "calculated manipulation" is a worthy cause, but I ask you to remember that men are always asked to sacrifice their freedom for worthy causes—for security, for material prosperity, for victory, for glory, and for peace. Like the path of sin, the highway to tyranny is strewn with primroses, and like the road to hell, it is paved with good intentions.

As Mr. MIKVA remarked in his admirable address of last Wednesday:

> The freedom of the press is not conditioned on its being a fair press.

I submit that any law this Congress might pass regulating the editing of television news broadcasts or requiring warnings with respect to particular editing practices would be no more constitutional than a similar law applying to newspapers. The committee states that a recent Supreme Court ruling "pointed out that calculated falsehood falls outside the fruitful exercise of the rights guaranteed by the first amendment."

What the court actually held was that citizens who had been damaged by false broadcast statements could recover damages in civil actions if and only if malicious intent could be shown. This is an extension to electronic journalism of the rule established in New York Times against Sullivan. No one has suggested that this Congress has the power to regulate newspaper news coverage, or to require newspapers to print descriptions of their editorial habits. No more, then, does the Supreme Court ruling the subcommittee cites (*Rosenbloom* v. *Metromedia*, 39 U.S.L.W. 4694, June 7, 1971) authorize the Congress to regulate the electronic media to prevent "calculated falsehood."

The Supreme Court has held that the first amendment can be overridden in the case of "clear and present danger." The subcommittee says:

> Because a free electorate forms its decisions on matters which it determines to be factual, the artificial transmutation of fact into non-fact without disclosure is a clear and present danger to that electorate.

With all due respect to the subcommittee, this is an outrageous reading of Justice Holmes' celebrated decision.

"Clear and present" means obvious and immediate, as in Justice Holmes' example of shouting "fire" in a crowded theater. Such a danger is manifestly not present in this case. Falsehood, or even bad opinion, is always dangerous, but we are not therefore empowered to ban all falsehood or to regulate all opinion.

In the absence of a danger which is truly "clear and present," we are left with the original constitutional dictum, which begins, "Congress shall make no law."

As Justices Black and Douglas like to remark, "no law" means no law.

If we are constitutionally forbidden to legislate in this area, then the subcommittee lacks the element of legitimate legislative interest without which its subpena is not valid. When first amendment issues are at stake, the normal judicial presumption of legislative interest does not hold. The courts will not give us the benefit of the doubt when we tinker with the first amendment (*Liveright* v. *Joint Committee of the General Assembly of Tennessee*, 279 F. Supp. 205 Md., Tenn., 1968).

To sum up: The subpena against CBS was not valid, because it called for materials privileged against subpena and because it could have had no legitimate legislative intent behind it. CBS and its president, Dr. Stanton, were therefore well within their rights in refusing to deliver the materials required.

Mr. Speaker, I am well aware of the tradition which requires that this body uphold one of its committees in matters of contempt. But we are bound by a higher law than tradition: Each of us is sworn to uphold the Constitution.

If we vote for this citation, the courts will reverse us. But our responsibility to the Constitution is as heavy as theirs. It should be beneath our dignity to leave it to the judges to defend the Bill of Rights. That is our job first, and we can only do it by defeating this citation.

I include at this point a number of documents germane to this issue: a memorandum which I circulated covering the delicate legal points involved, three briefs and a summary prepared by Wilmer, Cutler & Pickering, counsel for CBS, the new CBS "Operating Standards" for news programing, and Dr. Stanton's own statement to the subcommittee.

I also include a sample of the communications I have received on this issue:

ISSUES AND PRECEDENTS IN THE STANTON CONTEMPT CITATION

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of . . . the press . . ." At the heart of the Amendment is the assumption that "the widest possible dissemination from diverse and antagonist sources is essential to the welfare of the public, that a free press is a conditon of a free society." *Associated Press* v. *United States*, 36 U.S. 1, 20 (1945). "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves." *Grosjean* v. *American Press Co.*, 297 U.S. 233, 250 (1936).

These eloquent statements by the Supreme Court of the United States underscore the fact that the freedom to comment on the operations of government represents perhaps the most fundamental form of expression protected by the First Amendment. Where, as here, a government threat to freedom of the press arises as a result of a journalistic effort to criticize aspects of government operations, the Supreme Court has been particularly sensitive to "the primary need of a vigilant and courageous press . . ." *Near* v. *Minnesota*, 283 U.S. 697, 720 (1931), and to the fact that the "free press has been a mighty catalyst in awakening public interest in government affairs . . ." *Estes* v. *Texas*, 381 U.S. 532, 539 (1965).

Chairman Staggers, in his staff legal memorandum (*Congressional Record* 23924, July 8, 1971) apparently takes the view that the First Amendment is not involved here because the Committee wishes to expose falsehood "calculated falsehood falls outside the fruitful exercise of the rights guaranteed by the First Amendment." The recent Supreme Court opinion to which the memorandum refers, *Rosenbloom* v. *Metromedia*, 388 U.S.L.Y. 4694 (1971) says nothing of the kind. Indeed it is only the most recent in a long line of cases beginning with the famous *New York Times* v. *Sullivan*, 376 U.S. 54 (1964) which hold that the First Amendment, in order to preserve free debate on issues of public importance, prohibits libel judgment for even completely false statements, unless the plaintiff can prove actual malice. No one has suggested such malice is present here. This assertion itelf, therefore, points up clearly why the First Amendment must be read to insulate the news media from this kind of scrutiny.

In this case, the very important goal of preserving a free press has come into sharp conflict with the power of the Congress to investigate and to legislate. However, it must be remembered that no matter how broad this Congressional power may be—and it is indeed true that Congress has wide latitude in conducting investigations pursuant to legitimate legislative purposes, *Barenblatt* v. *United States*, 360 U.S. 109 (1959)—it, like all governmental powers, is limited by the First Amendment.

As the Supreme Court stated in *Watkins* v. *United States*, 354 U.S. 178, 188 (1957):

"The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, religion, press . . . or political belief and association be abridged."

Constitutional limitations upon governmental investigations are especially stringent when a Congressional investigation intrudes upon First Amendment freedoms

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through the use of compulsory process. In the words of former Chief Justice Warren, writing in *Sweazy* v. *New Hampshire*, 354 U.S. 234, 245 (1957):

"It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association and freedom of communication of ideas . . ."

With these principles in mind, the Supreme Court has enunciated a very high standard which the state must meet before an investigation which has the effect of infringing upon First Amendment freedoms can be allowed to proceed. Only a "compelling state interest" can justify limiting First Amendment freedoms," *NAACP* v. *Button*, 371 U.S. 415, 438 (1963).

Such a showing of compelling interest has consistently been required as the preception for government invasion into rights protected by the First Amendment. *E.g., Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539, 546 (1963); *DeGregory* v. *Attorney General of New Hampshire*, 383 U.S. 825, 829 (1966). For example, in a case where an asserted governmental interest in investigating subversion was held insufficient to justify inquiry into protected associations, the Supreme Court said:

"We understand this to mean—regardless of the label applied, be it 'nexus', 'foundation', or whatever—that it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of *overriding and compelling state interest* . . ." *Gibson* v. *Florida Investigation Committee, supra* at 546 (emphasis added).

At the very least, the case law in this area adds up to a requirement that the government must document its "overriding and compelling interest" by showing: (1) that the information sought is demonstrably relevant to a clearly defined, legitimate subject of governmental inquiry and (2) that the investigation is likely to turn up material information.

Applying these principles of law to the facts before us, we cannot escape the twin conclusions that (1) the issuance of the subpoena, followed as it could be by a criminal prosecution for contempt, abridges the freedom of the press guaranteed by the First Amendment, and (2) that no "overriding and compelling state interest" can be shown to justify that abridgement.

No lengthy analysis is needed here to establish that this Committee subpoena will have a "chilling effect" on the freedom of the press. In the landmark case of *Caldwell* v. *United States*, 431 F. 2d 1081 (9th Cir. 1970), *cert. granted*, 39 U.S.L.W. 3478 (May 3, 1971), the Court of Appeals found that forcing a newsman to reveal his sources would have this "chilling effect" on the press' ability to operate as an independent commentator on public issues. Investigation into the journalist's information-gathering techniques and his decision-making process in deciding what and how to shape his comment, infringes on freedom of the press no less than compelling the disclosure of sources. The effect is the same. As the Court of Appeals held in the Caldwell case:

"It is not unreasonable to expect journalists everywhere to temper their reporting so as to reduce the probability that they will be required to submit to interrogation. The First Amendment guards against government action that induces such self-censorship." 431 F. 2d at 1086

There has not been demonstrated the legitimate legislative need for this material required to establish the necessary state interest in the face of First Amendment questions.

It is not enough for the Committee to state its legislative purpose in general terms. If CBS is forced to defend itself in court, the courts will not presume that the purpose exists. At least two Federal Courts have in recent years themselves examined asserted legislative purposes. In *Liveright* v. *Joint Committee of the General Assembly of the State of Tennessee*, 279 F. Supp., 204, 216–17 (M. D. Tenn. 1968), the court stated:

"In some investigations, the legislative purpose is presumed . . . This course of action is appropriate when First Amendment freedoms are not threatened . . . but different considerations compel the Court to inquire into the legislative purpose when the rights of speech and association are involved . . ."

In this case, the Committee has stated a number of purposes, all of which add up to an inquiry into "staging and distortion of purportedly *bona fide* news." No matter how laden the general description of this inquiry is with technical terms, it is an inquiry into the truth of a particular journalistic program. This can never be a legitimate inquiry for the Congress since it is outside the area in which the Congress can legislate. Moreover, even if the general subject matter is a proper one for Congress, that cannot alone sustain either the propriety or the need for this particular information, especially where it is sought by compulsion. Indeed, compulsory disclosure is Constitutionally forbidden unless it is "demonstrated to bear a *crucial relationship* to a proper governmental interest or to be *essential* to the fulfillment of a proper government purpose." *Gibson* v. *Florida Legislative Investigation Committee, supra* at 549.

The inescapable conclusion, therefore, is that there is no compelling need on the part of the Congress for this information which would outweigh the very grave threats to freedom of the press which will inevitably flow from our compelling this disclosure. Nevertheless, some have attempted to evade the impact of this conclusion by arguing that the broadcast media, in contrast to the press, is entitled only to some lesser degree of protection under the First Amendment and that, therefore, they can be restricted in ways which would clearly be unconstitutional if attempted against newspapers.

The fact that technical limitations on the availability of frequencies requires some kind of governmental regulation, however, has never been held to be a justification for ignoring the First Amendment. For it is the First Amendment which sets the limit on permissible governmental regulation and not *vice versa*. Indeed the Supreme Court and the lower courts which have considered this issue have uniformly held that the broadcast media has the same First Amendment protection as newspapers and other printed media. See *e.g. United States* v. *Paramount Pictures, Inc.* 334 U.S. 131, 166 (1948), where the Supreme Court stated: "We have no doubt that moving pictures, like newspapers and radio are included in the press whose freedom is guaranteed by the First Amendment," and *Rumely* v. *United States*, 197 F. 2d 166, 177 (D.C. Cir. 1952) affd other grounds, 345 U.S. 41 (1953), where the court said "Speech and press by these new means—on the radio, on television, and in the movies—are freedoms protected by the First Amendment." Lastly, in a case recently affirmed by the Supreme Court, the Court of Appeals for the Third Circuit stated the view most concisely:

"No rational distinction can be made between radio and television on the one hand and the press on the other in affording the constitutional protection contemplated by the First Amendment." *Rosenbloom* v. *Metromedia*, 415 F. 2d 892, 895 (3rd Cir. 1969) *Affd* 39 U.S.L.W. (1970).

SUMMARY OF THE CBS LEGAL POSITION

1. The First Amendment says that "Congress shall make no law. . . . abridging the freedom of . . . the press."

2. A subpoena to testify in a Congressional investigation is equivalent to a "law" insofar as the application of the First Amendment is concerned. *Watkins* v. *United States*, 354 U.S. 178, 197 (1957).

3. The First Amendment prohibits any law that creates a prior restraint on publication or has a "chilling effect" which impedes free and robust reporting. For example, laws permitting libel judgments against the press for false reports about public figures or public events violate the First Amendment except where there is actual malice or reckless disregard for the truth. *New York Times* v. *Sullivan*, 376 U.S. 254 (1964). The reason is that the fear of large money judgments and the expense of litigation would inhibit journalists from vigorous and critical coverage of the activities of public officials.

4. The principle of *New York Times* was explicitly applied by the Supreme Court to news broadcasts, making clear that broadcast journalism—like newspapers and magazines—is to be protected under the First Amendment from the "chilling effects" of governmental action. *Rosenbloom* v. *Metromedia*, Inc., 39 U.S.L.W. 4694 (June 7, 1971).

5. Since Congress can "make no law" that would alter the *Sullivan* principle and impose penalties on broadcasters for *false* reports on the public events that are made in good faith, Congress clearly cannot impose penalties on broadcasters for good faith reports that are *not* false but merely edited in a way claimed to be "out of context" or otherwise "deceptive." Such reports must necessarily have a higher constitutional status than reports that are false and cause monetary damage to the person defamed. A law punishing reports that are not edited to a government standard of what is "out of context" or otherwise "deceptive," and subjecting all outtakes to government inspection whenever such a claim is made, would have a far more chilling effect on broadcast journalists and licensees than the threat of a mere suit for libel. The knowledge that their notes, films and tapes are subject to subpoena will inevitably cause newsmen to curtail the scope of their news-gathering activities.

6. Whether or not the Congress can devise constitutional legislation regulating the editing of broadcast news, the Subcommittee's subpoena is unnecessary for that purpose and has an unconstitutional chilling effect.

A. It is unnecessary because the Subcommittee already has the full texts of the two principal items that were edited for "The Selling of the Pentagon" in a manner that critics claim was "out of context" or otherwise "deceptive." With this and other information already before it, the Subcommittee has no need for the CBS outtakes except to conduct a fishing expedition for other possible claims of distortion.

B. There is an obvious chilling effect in putting broadcast journalists and licensees on notice that Congress can and will examine the outtakes of any news report that comes under criticism—particularly programs that comment on the conduct of government itself—and that it will do so for the purpose of imposing sanctions on those who broadcast unsatisfactory news reports in the future.

C. The chilling effect of a government subpoena to produce a journalist's records may sometimes have to be balanced against another important public purpose, such as the need to obtain evidence to enforce the general laws. Even in such cases the balance may go against enforcing the subpoena, as in *Caldwell* v. *United States*, 434 F. 2d 1081 (9th Cir. 1970) (cert. granted). But as *Caldwell*

points out, no balancing is called for when as here the only competing public purpose is itself "directed at the regulation of speech or press. . . ."

D. It has been urged that television outtakes are not the equivalent of a reporter's notes. Broadcast journalists take many of their "notes" on films or videotape, just as many print journalists now use electronic recording devices to take "notes." Accordingly, there is no basis for distinguishing between "outtakes" and "notes." The Reporter's Privilege statutes enacted in New York and other states make no such distinction; they expressly protect both. State Courts in New York, Illinois and California have invalidated subpoenas aimed at television outtakes, both on statutory and, in one case, on First Amendment grounds.

For all of the above reasons, the subpoena's demand for outtakes is in conflict with the First Amendment, and CBS has no duty to comply with it.

WILMER, CUTLER & PICKERING,
Washington, D.C., April 27, 1971.
COLUMBIA BROADCASTING SYSTEM, INC.
New York, N.Y.

DEAR SIRS: You have asked for our opinion as to whether Columbia Broadcasting System, Inc. (CBS) is legally obligated to comply with the subpoena issued on April 7, 1971, by the Special Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee and served on April 8, 1971, on Frank Stanton, President of CBS.

We conclude that compelled production of materials and documents to support the Subcommittee's investigation will inevitably and unconstitutionally restrain the presentation of controversial issue programming over the broadcast medium, and deter broadcast journalists from making the kind of investigation into governmental activities on which such programming depends. No agency of the government has the constitutional power to cause such restraint. The First Amendment's guarantee of freedom of the press applies to the broadcast media as it applies to any other journalistic medium, and this subpoena is an unconstitutional abridgment of that guarantee.

The revelant facts and the reasons for our conclusions are set out below.

THE SUBPOENA

The subpoena is in the form of a subpoena *duces tecum* directed to Frank Stanton, President of CBS, or any corporate officer, requiring the production of a wide range of materials connected with the preparation of the CBS documentary broadcast, "The Selling of the Pentagon."

The subpoenaed material includes: (1) film copies and transcripts of the broadcast itself and of a broadcast of commentary that followed the documentary's rebroadcast on March 23, 1971; (2) "all film, workprints, outtakes, sound tape recordings, written scripts and/or transcripts prepared, obtained, or utilized" in the preparation or broadcast of the documentary and the subsequent commentary; (3) the names and addresses of all persons (except military, governmental, or CBS employees) who appeared in the documentary or were filmed or recorded in the preparation of the documentary; (4) a statement (certified by CBS) of all disbursements of money, items of value or legal consideration of any kind made by CBS to any individual covered by item 3; and (5) copies of all written agreements, contracts, or releases (or where they were verbal, a written description thereof) entered into by CBS and individuals named in item 3.

On April 20, 1971, the Subcommittee, through Chairman Harley O. Staggers, convened in executive session and issued a Statement outlining the general legislative subjects and the specific subject matter into which the Subcommittee is inquiring. Of the seven legislative areas identified, four constitute no more than a description of the jurisdiction of the Subcommittee regarding communications matters—the Federal Communications Act of 1934, as amended, the Rules and Regulations of the Federal Communications Commission, the Commission's administration and enforcement of its rules, and the desirability of additional or remedial legislation for the "benefit and protection of the public." (Statement, p. 4.)

The remaining three legislative subjects evidence Subcommittee interest in the "applicability, if any," of the FCC's Fairness Doctrine "to questions of factual accuracy"; the adequacy of present laws and their administration to deal with the "preparation and presentation of" news documentaries; and whether certain (unidentified) technological advances or the employment of certain production and editing techniques by networks and others require new laws to protect the public "through disclosure requirements or other suitable means." (*Id.*, pp. 4–5.)

Beyond these general legislative considerations, the statement suggests several more specific items of inquiry. Thus, the Subcommittee states its concern "that the public be protected from deliberate staging and distortion of purportedly *bona fide* news . . .," and indicates that it intends to consider "whether the public has a right to be advised when edited sequences are presented . . . under conditions which might suggest that they have not been edited; whether it has a right to be advised when an apparently continuous event is actually the result of splicing together film and sound tracks which were obtained at different times and places; and whether it has a right to be advised when apparently spontaneous news coverage has been obtained through staging or other prearrangements."[1]

The Subcommittee states that with respect to the CBS broadcasts, allegations have been made that "incidents and events made to appear spontaneous and *bona fide* were, in fact, the product of questionable production techniques which distorted the original events." (*Id.*, p. 10) Finally, the Committee identifies the "sole question under inquiry" as being whether "the producers of television news documentary programs [are] engaging in factually false and misleading filming and editing practices, consisting of rearranging, staging, or misrepresenting events, giving viewers an erroneous impression that what they are seeing has really happened, or that it happened in the way or under the circumstances in which it is shown." (*Id.*, pp. 10–11.) The Subcommittee defends the sweep and relevance of the subpoena in these terms.

"One of the things we have discovered in the light of our previous investigations in this area is that once such a distortion has been acocmplished and incorporated into a final broadcast, it is virtually impossible to detect. This is why the original, uncut, and unedited material must be examined." (*Id.*, p. 9.)

The Subcommittee disclaims any purpose to determine whether CBS has been "biased" against the Department of Defense in its documentary or to "seek . . . to curtail the presentation of controversial issues or of unpopular causes or personalities." (*Id.*, pp. 10 12.) Despite these disclaimers, it is clear from the statement of purposes that the Subcommittee will necessarily be engaged in far-reaching surveillance of the specific news judgments and editorial decisions made by CBS in the preparation and broadcast of "The Selling of the Pentagon." The subjects to be investigated are the "production and editing techniques" or the "filming and editing practices" employed by CBS and others in the preparation and presentation of "The Selling of the Pentagon" and other news documentaries. These techniques and practices are to be judged for "factual accuracy." A determination is to be made whether they are "factually false and misleading" and whether they give viewers "an erroneous impression that what they are seeing has really happened, or that it happened in the way or under the circumstances in which it is shown." Upon this basis, a further determination is to be made whether the public should be "protected" against such falsehood or error "through disclosure requirements or other suitable means."

Such an inquiry involves an effort to establish the truth or falsity of factual information which news documentaries may contain by comparing the raw data which journalists have gathered with the finished broadcast they have presented, and determining whether their decisions to include, exclude, organize, rearrange or otherwise depart from the raw data are in some sense "distortions" or convey a "misleading impression." Thus, the Subcommittee will be inevitably involved in an effort to apply a presumed objective criterion of truth both to the product of journalism and to the very heart of the journalistic process.[2]

DISCUSSION

I. Broadcast Journalism Is, For All Relevant Purposes, Entitled To First Amendment Protection Identical To That Afforded Any Other Medium Of The Press.

Implicit in the April 20 Statement of the Subcommittee, and explicit in other statements of its Chairman and another Subcommittee member, is the assumption that sufficient difference exists between broadcasting and other journalistic media to legitimize the subpoena directed to CBS, even if such process would be unconstitutional if directed to a newspaper.[3] This viewpoint would permit governmental intrusion into the news judgments of the journalistic medium that, according to recent surveys, is looked to and relied upon by more Americans than any other source.[4]

Judicial precedents, however, are to the contrary. The Supreme Court and lower courts have consistently held that broadcast journalists are entitled to First Amendment protection. *See, e.g., United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948) ("We have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment."); *Superior Films, Inc.* v. *Department of Education*, 346 U.S. 587, 589 (1954) (concurring opinion); *Rumely* v. *United States*, 197 F. 2d 166, 177 (D.C. Cir. 1952), *aff'd. on other grounds*, 345 U.S. 41 (1953) ("[S]peech and press by these new means—on the radio, on television, and in the movies—are freedoms protected by the First Amendment."); *American Broadcasting Co.* v. *United States*, 110 F. Supp. 374, 389 (S.D.N.Y. 1953), *aff'd on other grounds*, 347 U.S. 284 (1954) ("Broadcasting and television are entitled to the protection of the First Amendment to the Constitution, guaranteeing freedom of speech and of the press."); *Estes* v. *Texas*, 381 U.S. 532, 539–40, 589, 604, 614–15 (1965) (majority, concurring and dissenting opinions); *St. Amant* v. *Thompson*, 390 U.S. 727 (1968); *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969) (discussed more fully below).

The United States Court of Appeals for the Third Circuit has perhaps most succinctly summarized the state of the law:

"[T]he fact that the news medium [involved in the libel case before the court] . . . is a radio station rather than a newspaper does not make the First Amendment discussion, in particular with regard to freedom of the press, any less germane. Radio and television were, of course, unknown media when freedom of the press was written into the

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Bill of Rights, *but no rational distinction can be made between radio and television on the one hand and the press on the other in affording the constitutional protection contemplated by the First Amendment.*" *Rosenbloom* v. *Metromedia, Inc.*, 415 F. 2d 892, 895 (3rd Cir. 1969), *cert. granted on other grounds*, 397 U.S. 904 (1970) (emphasis supplied.

There is nothing new in this concept. It is, in fact, a constitutional interpretation which Congress affirmed almost forty-five years ago. The Radio Act of 1927 contains a provision, unchanged to the present, that explicitly bars the Federal Communications Commission from exercising "the power of censorship over the radio communications or signals transmitted by any radio station," or from acting to "interfere with the right of free speech by means of radio communication." *See* 47 U.S.C. § 326 (1964). Enactment of this provision was viewed at the time not merely as a Congressional limitation on agency power, but as a recognition of the First Amendment rights of broadcasters, which are not subject to Congressional trespass. As Rep. Scott, the House floor manager of the conference report, stated in response to a complaint that the proposed Radio Act supplied only very limited control over licensee programming:

"Yes; and you are trespassing very closely on sacred ground when you attempt to control the right of free speech. It has become axiomatic to allow the freedom of the press, and *when Congress attempts by indirection to coerce and place a supervision over the right of a man to say from a radio station what he believes to be just and proper, I think Congress is trespassing upon a very sacred principle.*" 68 *Cong. Rec.* 2567, 69th Cong., 2d Sess. (1927) (emphasis supplied).

To be sure, differing characteristics among the various media justify some distinctions as to what constitutes permissible regulation without contravening the First Amendment. *See Joseph Burstyn, Inc.* v. *Wilson*, 343 U. S. 495, 503 (1952). In the case of broadcasting, some government regulation is required to deal with the scarcity of frequencies available for this form of communication. Thus, the Commission has been upheld in limiting portions of the broadcast spectrum to certain specialized uses, such as amateur, aircraft, police, defense, navigation, and industrial operation.[5] Courts have also upheld the Commission's power to place some limits on the types of programming that may be employed by new forms of broadcast service (such as Pay-TV), in order to increase the diversity of service offered to the public and, at the same time, protect the viability of existing commercial uses of the broadcast spectrum. *National Ass'n. of Theater Owners* v. *FCC*, 420 F. 2d 194 (D. C. Cir. 1969), *cert. denied*, 397 U. S. 922 (1970).

In sum, these cases have established that the First Amendment does not bar the Federal government from regulating access to the spectrum, in order to maximize efficient utilization and augment the diversity of communication services. Such decisions are entirely irrelevant to the curtailment of historic First Amendment rights posed by the Subcommittee's subpoena. That Amendment protects the press from governmental intrusion into its internal journalistic processes,[6] whether such intrusion be a direct attempt to regulate or an indirect attempt to chill free exercise of those processes by compelling their disclosure. And no case has ever held or indicated that such constitutional protection is not available to those broadcast media subject to governmental regulation.

In this respect, the Subcommittee's reliance upon *National Broadcasting Co.* v. *United States*, 319 U. S. 190 (1943) and *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367 (1969) is misplaced. In *NBC*, the Court upheld the constitutionality of Commission rules banning licensee-network arrangements which restricted the freedom of licensees to choose programs that in their judgment best served the public interest. The Court's decision specifically noted that the Commission's justification for the rules was the need to protect the right of licensees to select program material in the first instance. 319 U. S. at 199.

In *Red Lion*, the Court faced the question whether the Commission could in certain limited circumstances create a right to reply to ensure that competing viewpoints on controversial issues of public importance receive adequate opportunity for expression over the airwaves. The Fairness Doctrine (under which these "personal attack" rules were established) and Section 315 of the Communications Act (providing for "equal opportunities" for political candidates) are designed to serve occasionally competing First Amendment interests—the right of the public to obtain conflicting views on important issues, and the right of broadcast journalists to report and interpret events and to conduct discussions of important topics.[7] Neither the rules before the Court nor the decision of the Court were intended to limit the right of the broadcaster to select programs and program material in the first instance. To the contrary, their goal was to ensure that, consistent with the First Amendment, once the licensee had broadcast views that attacked another person, that person was given an opportunity to air his reply.

By contrast, the specific effect of the subpoena and the legislative surveillance it represents will be to chill the freedom of CBS journalists to select news and documentary material for broadcast in the first instance. While the Court in *Red Lion* had no such issue before it, it strongly suggested that the First Amendment would not permit such a serious constitutional intrusion. The Court, in discussing the constitutional protections applicable to television, emphasized that speech on public issues and public affairs is at the core of the interests protected by the First Amendment, and that there is a First Amendment "right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences . . ." which "may not constitutionally be abridged either by Congress or by the FCC." 395 U.S. at 390.

Thus, the Court described the First Amendment as having "a major role to play as the Congress itself recognized in § 326, which forbids FCC interference with 'the right of free speech. . . .' " *Id.*, at 389–90. The opinion underscores "the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee." *Id.*, at 390. And the Court specifically noted that "more serious First Amendment issues" would be raised by action that restricted a licensee's right to decide what to broadcast in the first instance. *Id.*, at 396.

Congress and the courts have not been alone in concluding that the First Amendment applies with full force to broadcasting. The Attorney General's recent guidelines regarding the propriety of compelling production of reporters' notes by grand jury subpoena explicitly are made applicable without distinction to broadcast journalism as well as other journalistic forms. In introducing these guidelines, the Attorney General counted the nation's radio and television as part of the "numerous, vigorous and diverse" press that has resulted in "more freedom of speech and freedom of the press in this country than in any country in the world." "Free Press and Fair Trial: The Subpena Controversy," an address by Hon. John N. Mitchell, Attorney General of the United States, before the House of Delegates, American Bar Association, August 10, 1970, at p. 10.

In sum, in their application to broadcasting, "the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary." *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495, 503 (1952). And one of those principles, as we demonstrate below, is the right of journalists and news organizations to engage in news reporting and editing without having to face subsequent government examination of all their filmed and written notes in order to weigh, on the basis of hindsight, the accuracy and truth of their news judgments.[8]

The Subcommittee's implied assertion that a subpoena invalid against other forms of journalism can be constitutional if applied to broadcasting is thus contrary to the applicable judicial, congressional, and executive precedents.

II. The First Amendment Forbids The Congress From Compelling Production Of The Filmed And Written Materials Compiled In The Preparation Of "The Selling Of The Pentagon".

A. Congress may not regulate the manner in which the press reports and interprets current events particularly when such reports are critical of the government.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of . . . the press . . ." The language of the Amendment is unequivocal, and the Supreme Court has repeatedly and often with great eloquence, reaffirmed the principles implicit in it. "That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society." *Associated Press* v. *United States*, 326 U.S. 1, 20 (1934). "A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves." *Grosjein* v. *American Press Co.*, 297 U.S. 233, 250 (1936).

In order to preserve these principles, the Court has often emphasized the nearly absolute degree of protection to which freedom of the press is entitled. For example, in striking down certain government restrictions on the right of the press to comment on judicial proceedings, the Court has declared that "the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to other liberties, the broadest scope that could be countenanced in orderly society." *Bridges* v. *California*, 314 U.S. 252, 265 (1941). Similarly, in *United States* v. *Rumely*, 345 U.S. 41, 56–57 (1953), the concurring opinion emphasized the "preferred position granted speech and the press by the First Amendment . . .," and declared that the Amendment "expresses the confidence that the safety of society depends on the tolerance of government for hostile as well as friendly criticism, that in a community where men's minds are free, there must be room for the unorthodox as well as the orthodox views." [9]

Where, as here, a governmental threat to freedom of the press arises as a result of a journalistic effort to criticize aspects of governmental operations, the Court has been particularly sensitive to "the primary need of a vigilant and courageous press . . .," *Near* v. *Minnesota ex rel. Olson*, 283 U.S. 697, 720 (1931), and to the fact that "[t]he free press has been a mighty catalyst in awakening public interest in governmental affairs. . . ." *Estes* v. *Texas*, 381 U.S. 532, 539 (1965). The Court's view that freedom to comment on the operations of government represents one of the most fundamental forms of expression protected by the First Amendment derives from its conviction that

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"speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74–75 (1964).[10] "The liberty of opinion keeps governments themselves in due subjection to their duties." Erskine's Speech in Defense of Paine, quoted in *Grosjean* v. *American Press Co.*, *supra*, 297 U.S. at 247–48. Indeed, the freedom of the press to criticize the government is so absolute that "no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence." *New York Times* v. *Sullivan*, 376 U.S. 254, 291 (1964) (quoting from *City of Chicago* v. *Tribune Co.*, 307 Ill. 595, 601, 139 N.E. 86, 88 (1923)).

Recognition has been given to the danger that "[c]harges of reprehensible conduct, and in particular of official malfeasance, unquestionably create a public scandal"—but "the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication." *Near* v. *Minnesota ex rel. Olson*, *supra*, 283 U.S. at 722. Furthermore, the Court has gone so far as to rule that "erroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive. . . .'" *New York Times Co.* v. *Sullivan*, *supra*, 376 U.S. at 271–72 (quoting *NAACP* v. *Button*, 371 U.S. 415, 433 (1963)).

The efforts of the Subcommittee to force production of the working materials involved in "The Selling of the Pentagon," on the grounds of alleged distortion and on the premise that remedial legislation may be necessary, fly squarely in the face of these constitutional principles. Because (as we show below) the Subcommittee's actions will inhibit the news judgments of the press, they are the constitutional equivalent of an attempt to formulate a "law . . . abridging the freedom of . . . the press. . . ." For in the First Amendment area, the courts do not distinguish between laws that abridge free speech and other lawmaking activities that have the same effect:

"Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of lawmaking. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protective freedoms by law or by lawmaking." *Watkins* v. *United States*, 354 U.S. 178, 197 (1957).

In presuming that it may regulate the editorial judgments of newsmen, the Subcommittee has chosen to ignore the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co.* v. *Sullivan*, *supra*, 376 U.S. at 270.

B. To compel production of filmed and written materials compiled in preparing news documentaries would have an unconstitutionally chilling effect on First Amendment freedoms.

The underlying assumption of the Subcommittee is reflected in its April 20th Statement—that the Subcommittee is entitled to investigate, and has the power to determine, whether television news documentary producers are engaging in "factually false and misleading filming and editing practices. . . ."(p. 10). It is for this purpose of judging the editorial fairness involved in the portrayal of the CBS documentary that the Subcommittee has subpoenaed the background scripts, recordings, and outtakes from which the final program was assembled. (pp. 11–12).

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This investigatory effort is wholly illusory, regardless of the well-meant intentions from which it may have sprung. As CBS asserted in its letter of April 20, 1971 to Chairman Staggers, truth or accuracy is not the same to all men. The final published or broadcast product represents a news organization's best judgment of the truth. Journalists may, of course, often differ with one another as well as with those whose conduct or views they report. They may even differ with the government as to whether the accounts they publish or broadcast are "true."

Perhaps no one to date has captured this wisdom better than Judge Learned Hand in *United States* v. *Associated Press*, 52 F. Supp. 362, 372 (S. D. N. Y. 1943), *aff'd.*, 326 U.S. 1 (1945):

"News is history; recent history, it is true, but veritable history, nevertheless; and history is not total recall, but a deliberate pruning of, and calling from, the flux of events. Were it possible by some magic telepathy to reproduce an occasion in all its particularity, all reproductions would be interchangeable; the public could have no choice, provided that the process should be mechanically perfect. But there is no such magic; and if there were, its result would be immeasurably wearisome, and utterly fatuous. In the production of news every step involves the conscious intervention of some news gatherer, and two accounts of the same event will never be the same. Those who make up the first record—the reporters on the spot—are themselves seldom first hand witnesses; they must take the stories of others as their raw materials, checking their veracity, eliminating their irrelevancies, finally producing an ordered version which will evoke and retain the reader's attention and convince him of its truth. And the report so prepared, when sent to his superiors, they in turn 'edit', before they send it out . . .; a process similar to the first. A personal impress is inevitable at every stage; it gives its value to the dispatch, which without it would be unreadable."

First Amendment rights comprehend the reality that there is no universal standard of journalistic truth. In the Supreme Court's words: "Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any tests of truth—whether administered by judges, juries, or administrative officials—and especially one that puts the burden of proving truth on the speaker." *New York Times Co.* v. *Sullivan*, *supra*, 376 U.S. at 271.

An "untrammeled press as a vital source of public information" [11] is one of our most precious heritages. "The threat of sanctions may deter . . . [its] exercise almost as potently as the actual application of sanctions. . . ." [12] A quixotic governmental search for ultimate truth in journalism necessarily can stifle this "delicate and vulnerable" freedom, especially when it is conducted by compulsory process. The recent landmark case of *Caldwell* v. *United States*, 434 F.2d 1081 (9th Cir. 1970) (*cert. pending*), is specific on this point: "[I]t is not unreasonable to expect journalists everywhere to temper their reporting so as to reduce the probability that they will be required to submit to interrogation. The First Amendment guards against governmental action that induces such self-censorship." *Id.*, at 1086.[13]

Similarly, the Attorney General of the United States has recognized that an unrestricted and unwise use of the subpoena "may seriously affect the vigor of our press institutions and their relationships with the federal government, the bar and the courts." "Free Press and Fair Trial: The Subpoena Controversy," address by the Hon. John N. Mitchell, Attorney General of the United States, before the House of Delegates, American Bar Association, August 10, 1970, at page 17.

The outtakes, and other material not broadcast, sought in the subpoena are the broadcast journalist's equivalent of the newspaper reporter's notes, the "work papers" from which the final story is produced. The "chill" created by the Subcommittee's subpoena derives from its effect on the journalists information-gathering techniques as well as on the accessibility of news sources. The knowledge that their notes, films and tapes are subject to compulsory process will inevitably cause newsmen to curtail the scope of their news-gathering activities. The accuracy and fairness of news reporting and editorial judgment, the American public's "right to know"—the very goals the Subcommittee purports to be serving (Statment, p. 13)—will suffer. Moreover, key confidential sources of news will be silenced if every person filmed, taped, or interviewed, whether or not included in the ultimate broadcast, must risk being identified as a result of governmental compulsion. As the Court of Appeals put it in *Caldwell:* "The very concept of a free press requires that the news media be accorded a measure of autonomy; that they should be free to pursue their own investigations to their own ends without fear of governmental interference; and that they should be able to protect their investigative processes," *Caldwell* v. *United States*, *supra*, 434 F. 2d at 1086.

The chilling effect of the Subcommittee's subpoena on press freedom is potentially a far more powerful inhibition, and reaches at least equal if not more fundamental rights, than governmental activities the Court has found unacceptable in a host of prior cases. *E.g.*, *Smith* v. *California*, 361 U.S. 147 (1959) (requirement that a bookseller examine the contents of the books he sells); *Manual Enterprises, Inc.* v. *Day*, 370 U.S. 478, 492–93 (1962) (opinion of Harlan, J.) (requirement that a magazine publisher investigate his advertisers); *Talley* v. *California*, 362 U.S. 60 (1960) (requirement that names and addresses of sponsors be printed on handbills); *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963) (requirement that an organization supply membership lists); *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293 (1961) (*Id.*); *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960) (*Id.*); *NAACP* v. *Alabama ex. rel. Patterson*, 357 U.S. 449 (1958) (*Id.*)

In fact, the severity of the inhibition brings into question the very power of Congress to investigate the editorial judgments of the press, let alone its power to do so by compulsory process against journalists and their records:

"The theory of our Free Society is that government must be neutral when it comes to the press—whether it be rightist or leftist, orthodox or unorthodox. The theory is that in a community were men's minds are free, all shades of opinion must be immune from governmental inquiry lest we end with regimentation. Congress has no more authority in the field of the press than it does where the pulpit is involved. Since the editorials written and the news printed and the policies advocated by the press are none of the Government's business, I see no justification for the Government investigating the activities, leanings, ideology, qualifications, prejudices or politics of those who collect or write the news." *Russell* v. *United States*, 369 U.S. 749, 776–77 (1962) (concurring opinion).

In the Subcommittee's Statement of April 20 (pp. 7–9), much is made of the fact that on three previous occasions, it has investigated the manner in which CBS produced news documentaries and that, in two of these cases, it subpoenaed unbroadcast film outtakes and other materials without objection from CBS.

The Subcommittee's prior predilection for investigating CBS journalists and demanding their records in no way supports the legality of the present subpoena; if anything, it adds to the subpoena's illegal chilling effect. The fact that CBS did not chal-

lenge previous subpoenas does not concede or sustain their validity.[14]

Moreover, and without prejudice to the right of CBS to challenge similar subpoenas in the future, it should be noted that in the one previous case in which nonbroadcast material was supplied CBS was being investigated not merely for an alleged attempt to distort or falsify the news; it was also accused of violating or having knowledge of violations of substantive criminal laws of general application not directed at journalists as such. Under such circumstances, as the Attorney General's promulgation of subpoena guidelines reflects, there may be a constitutional basis for balancing First Amendment rights against the need to enforce the general laws. No such balancing can be justified, however, when the object of the government's inquiry is not to enforce the general laws, but to regulate the practice of journalism itself, and to enforce some governmental standard of good journalistic practice. As the Ninth Circuit noted in *Caldwell, supra*, 434 F. 2d at 1083, n. 1:

"Where, as here, the alleged abridgment of First Amendment interests occurs as a by-product of otherwise permissible governmental action not directed at the regulation of speech or press, 'resolution of the issues always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.' *Barenblatt* v. *United States*, 360 U.S. 109. . . ."[15]

CONCLUSION

For all the facts and reasons stated above, it is our opinion that the Subcommittee may not constitutionally require the production of film and script materials not actually broadcast and that CBS is under no legal duty to comply.

WILMER, CUTLER & PICKERING.

FOOTNOTES

[1] (*Id.*, p. 9.) We understand that CBS knows of no allegations that any scenes in "The Selling of the Pentagon" were "staged."

[2] As we demonstrate later, the courts have consistently recognized that there can be no such test for journalistic truth, since "[n]ews is history . . . and history is not total recall, but a deliberate pruning of, and calling from the flux of events . . .," and that journalism produced against such a monolithic standard of truth would be "immeasurably wearisome, and utterly fatuous." *United States* v. *Associated Press, Inc.*, 52 F. Supp. 362, 372 (S. D. N. Y. 1943) (L. Hand, J.), *aff'd.*, 326 U. S. 1 (1945).

[3] As to the validity of the subpoena under the First Amendment, the Subcommittee's statement is limited to brief treatment of general language in two Supreme Court opinions and contains no discussion of the applicability of any cases proscribing abridgement of freedom of the press. *Television Digest*, Vol. 11, No. 15 (April 12, 1971) purports to quote Chairman Staggers' views on the constitutionality of such a subpoena as follows (p. 2):

"Q—Are a print reporter's notes different from TV's outtakes?

"A—I've always believed they were different. You know that.

"Q—Do you have power to subpoena my notes from this interview?

"A—No.

"Q—What if I were a reporter for TV talking to you on the phone?

"A—Well, then, that would be different. The Committee could subpoena your notes.

"Q—Why?

"A—TV is different. It's very important that the networks be accurate.

"Q—Is a congressional committee qualified to determine what's accurate?

"A—Yes. By using the outtakes, then we can determine if what was aired was fair & accurate. . . ."

See also remarks of Rep. Springer, Transcript, pp. 55–56, 59–60.

[4] See *Broadcasting*, Nov. 2, 1970, p. 48.

[5] *See, e.g., California Citizens Band Ass'n.* v. *United States*, 375 F. 2d 43 (9th Cir.), *cert. denied*, 389 U.S 844 (1967); *Lafayette Radio Electronics Corp* v. *United States*, 345 F. 2d 278 (2d Cir. 1965).

[6] See Part II of this memorandum.

[7] We do not understand anything in the Subcommittee's April 20 statement to suggest that CBS has violated the Fairness Doctrine or personal attack rules, or to suggest that in its coverage of the controversial issues raised in the broadcast, CBS has failed to afford an opportunity for the expression of conflicting views. As we understand the matter, after the rebroadcast on March 23, CBS broadcast vigorous criticisms of "The Selling of the Pentagon" by some of the issues raised by the documentary, featuring two critics and two supporters. Moreover, CBS has afforded critics of the documentary extensive coverage in its news programs.

[8] The Subcommittee's Statement relies on earlier investigations of quiz programs and the resulting legislation that banned certain fradulent practices in such programs. (pp. 6–7.) The control of outright fraud and bribery in entertainment programs that are not designed as vehicles for the communication of ideas is of course a far cry from efforts to investigate and regulate news broadasts criticizing Government activities.

[9] In *Rumley*, the Court blocked an effort by the House Select Committee on Lobbying Activities to compel a witness to reveal the names of those who had made purchases of books distributed by the witness' organization. In condemning this misuse of a Congressional subpoena, the concurring opinion also declared that "[i]f the present inquiry were sanctioned, the press would be subjected to harrassment that in practical effect might be as serious as censorship. . . . The books and pamphlets that are critical of the administration, that preach an unpopular policy in domestic or foreign affairs, that are in disrepute in the orthodox school of thought will be suspect and subject to investigation. . . . Through the harassment of hearings, investigations, reports, and subpoenas government will hold a club over speech and over the press. Congress could not do this by law. The power of investigation is also limited. . . ." *Id.*, 345 U.S. at 58–58 (footnotes and citations omitted).

[10] "[S]ince informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern." *Grosjean* v. *American Press Co., supra*, 297 U.S. at 250.

[11] *Grosjean* v. *American Press Co., supra*, 297 U.S. at 250.

[12] *NAACP* v. *Button, supra*, 371 U.S. at 433. *See Dombrowski* v. *Pfister*, 380 U.S. 479 (1965).

[13] The District Court for the District of Columbia, in granting a judgment of acquittal from a conviction of contempt of Congress, has expressed very similar views:

"[T]hese hearings consisted of the questioning of persons employed in the newspaperfield, in radio and television. The danger inherent in such an investigation is found not only in the effect upon those investigated but also in the potential effect upon others in the same field. There is no need to stress the importance to our society of a free press—and, therefore, of the necessity of enabling writers to formulate ideas and associations freely and without fear of governmental retribution by investigation or otherwise. History is replete with instances in which writers and philosophers have been penalized by the state, but it is always the writers and philosophers who are remembered and admired, never their prosecutors or inquisitors. It is difficult to draw the line between investigations of the political beliefs of newspapermen and investigations of newspapers. For newspapers consist of news stories and editorials; and news stories and editorials are written by newspapermen. To inhibit the freedom of thought and association of newspapermen is to infringe upon the freedom of the press. It is also a temptation to those investigating newspapermen to wander into the field of press content, and at times during these hearings, the Subcommittee was unable to resist even this direct invasion." *United States* v. *Peck*, 154 F. Supp. 603, 605 (D.D.C. 1957) (footnote omitted).

[14] In one of these instances, as the Subcommittee states, the items requested had already been destroyed, so that CBS did not possess materials with which to respond.

[15] In addition, there is a narrower, but related First Amendment ground which renders the subpoena invalid. Even if the Subcommittee's purpose to investigate "filming and editing" practices were constitutional, the Subcommittee still would be required to adhere to the basic precept that such a purpose "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960). Even when considered in light of the Subcommittee's stated goals, the list of subpoenaed materials is overly broad and reflects the Subcommittee's failure to apply this constitutional standard to the situation before it. Had the Subcommittee done so, a much narrower set of materials would have been subpoenaed.

WILMER, CUTLER & PICKERING,
Washington, D.C., June 15, 1971.

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N.Y.

DEAR SIRS: You have asked for our opinion as to whether Columbia Broadcasting System, Inc. (CBS) is obligated to comply with the subpoena issued on May 26 by the Special Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee, relating to its investigation of "The Selling of the Pentagon."

The May 26 subpoena calls for the personal appearance of Frank Stanton, President of CBS, for the purpose of giving testimony. Like the withdrawn subpoena of April 7 that it replaces, it also commands the production of "film, workprints, outtakes, sound-tape recordings, written scripts and/or transcripts utilized" in connection with "The Selling of the Pentagon." Unlike the withdrawn subpoena, the new subpoena is "limited to all such materials relating to the actual broadcast and [does] not include such materials relating to segments not shown. . . ."

We have reached the following conclusions:

(1) Since our opinion letter of April 27, 1971, a new decision of the Supreme Court has made even more clear the proposition that broadcasters are protected by the First Amendment, for all relevant purposes, in the same way that other forms of journalism are protected.

(2) The subcommittee's press release of May 25 and the letter accompanying the subpoena of May 26 show no alteration of the Subcommittee's fundamental assertion of the power to investigate, through compelled process, how CBS news personnel edited "The Selling of the Pentagon," as an aid in its formulation of legislation regulating editing practices and edited broadcasts.

(3) Although slightly narrower in scope than the April 7 subpoena, the new subpoena has an unconstitutional chilling effect upon the exercise of First Amendment rights.

Accordingly, we have reached the same conclusions concerning the new subpoena as those set forth in our opinion of April 27, 1971, a copy of which is attached for your convenience. In our opinion, the subpoena is in conflict with the First Amendment. As a result, CBS is under no legal ob-

ligation to supply the materials demanded, and Dr. Stanton is under no legal obligation to answer questions designed to obtain the information the Subcommittee seeks pursuant to its stated goals.

We shall discuss, first, the significance of the June 7, 1971 Supreme Court decision in *Rosenbloom* v. *Metromedia, Inc.*, 39 U.S.L.W. 4694 (June 7, 1971), which reenforces our view that in all relevant respects the First Amendment is applicable to broadcast journalism. We shall then discuss our reasons for concluding that the Subcommittee's changes in the scope of the subpoena, and its newly advanced arguments in support of its demands, do not alter the unconstitutional chilling effect that would be created were CBS compelled to comply.

I. THE ROSENBLOOM DECISION AND THE FIRST AMENDMENT RIGHTS OF BROADCASTERS

In *Rosenbloom*, the issue facing the Supreme Court was whether the rule of *New York Times Co.* v. *Sullivan*[1]—prohibiting libel recoveries for comment about public figures in the absence of a showing of actual malice or knowing disregard of the truth—should be applied when a radio station broadcast information about an individual, not himself a public figure, involved in an event of public or general interest. The Court upheld a lower court decision denying the right to recover, on the ground that the *New York Times* rule governed.

Rosenbloom is the first Supreme Court case directly involving the applicability of the *New York Times* rule to utterances of a news broadcaster on a station licensed by the Federal Communications Commission. Although the members of the Court were divided over the application of the *New York Times* rule to a libel action in which the plaintiff is not a public figure, all of the justices clearly believed that for all relevant purposes First Amendment rights fully apply to federally licensed broadcasters.

Mr. Justice Brennan, announcing the judgment of the Court, noted that the "petitioner does not question that the First Amendment guarantees of freedom of speech and freedom of the press apply to . . . newscasts." 39 U.S.L.W. at 4695 n. 3. And he announced the holding as being that—

"A libel action, as here, by a private individual against a *licensed radio station* for a defamatory falsehood in a newscast relating to his involvement in an event of public or general concern may be sustained only upon clear and convincing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard of whether it was false or not." (Emphasis supplied.) *Id.*, at 4702.

This holding was the culmination of an analysis that emphasized the importance of the *New York Times* rule as a means of assuring "breathing space" for journalistic exercise of First Amendment rights and for preventing unwarranted governmental actions threatening to chill those right.

In a concurring opinion, Mr. Justice White stated that "*New York Times* gives the *broadcasting media* and the press the right not only to censure and criticize officials but also to praise them and the concomitant right to censure and criticize their adversaries," and that "the First Amendment gives the press *and the broadcast media* a privilege to report and comment upon the official actions of public servants in full detail. . . ." 39 U.S.L.W. at 4705. (Emphasis supplied.) Mr. Justice Black, in another concurring opinion, stated his familiar position that libel judgments "against the news media" are unconstitutional "even when statements are *broadcast* with knowledge they are false." *Id.*, at 4703. (Emphasis supplied.) And Mr. Justice Harlan's dissent indicated that he sees no difference between "publishers" and "broadcasters" and would treat them in the same way under the First Amendment, subjecting both to a libel standard of reasonable care. *Id.*, at 4708.

Thus, four of the five opinions, speaking for a clear majority of six Justices,[2] expressly treated news broadcasts as identical to newspapers. And it may fairly be concluded that every Justice believed that the First Amendment guarantees broadcasters the same protection against chilling effects on the gathering or reporting of news that it guarantees to any other journalistic medium.[3]

As our opinion letter of April 27 indicates, numerous courts (including on many occasions the Supreme Court) have stated prior to *Rosenbloom* that there is no difference, for any relevant purpose, between broadcasters and other media of the press. The Supreme Court's decision in *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969) was thought by some to cast these earlier statements in doubt. But the *Rosenbloom* decision makes crystal clear that *Red Lion* cannot be read as depriving broadcasters of "the freedom of the press" with respect to what they broadcast in the first instance, or as a ruling entitling the Government to regulate broadcasters in a manner that chills this freedom. *Red Lion* holds only that the need to license broadcasters permits reasonable government regulation of what broadcasters must present as a *consequence* of what they broadcast in the first instance, in order to ensure "fairness" in the discussion of controversial issues.[4] The Court in *Red Lion* itself expressly stated that the case would be different if the rules under review had affected what broadcasters reported in the first instance, 395 U.S. at 396. *Rosenbloom* is that different case, and holds that the First Amendment is fully applicable.

If libelous comment broadcast about public affairs cannot be subjected to official penalties, non-libelous comment must certainly deserve an even more protected status. Legislation that is designed to deter "distortions" or to control "editing practices" in broadcast news reports, by imposing sanctions for or regulations upon comment about public events that falls short of malicious libel, could not withstand constitutional scrutiny.

II. THE CEILING EFFECT OF THE SUBPOENA FOR TESTIMONY AND DOCUMENTS

Whether or not the Subcommittee can devise constitutional legislation regulating the manner in which broadcasters must edit the news, the Subcommittee cannot, in our opinion, enforce the present subpoena in aid of that objective.

As *Rosenbloom* makes clear, the First Amendment protects broadcasters and other forms of press media against actions intended to have or likely to result in a chilling effect upon the exercise of their First Amendment rights. Our letter of April 27 outlines the chilling effect upon news reports about public events that the Subcommittee's prior subpoena threatened to cause. The chilling effect of being required by compulsory Congressional subpoena to disclose the complete details of the editing process is obviously far greater than the chilling effect of a court judgment for damages—the government action held unconstitutional, absent malicious libel, in *Rosenbloom*. The chill is greater because the awesome powers of Congress transcend the limited powers of the private litigant, and all journalists will be inhibited by the threat imposed by legislative surveillance and its potential consequences.[5] The only question that remains, therefore, is whether our previous conclusion remains applicable in light of the slight narrowing of the scope of the subpoena and the Subcommittee's new arguments in support of it.

Our examination of the scope of the modified subpoena leads us to conclude that while there has been a reduction in the volume of documents called for, there has been no substantive change as to the nature of the documents that the Subcommittee seeks. The new subpoena continues to call for the same documents—"film, workprints, outtakes, sound-tape recordings, written scripts and/or transcripts utilized" in connection with the preparation of "The Selling of the Pentagon"—that were called for in the first subpoena. All that the Subcommittee has done is to make clear that the new subpoena does not reach materials segments of which were not actually broadcast.

As a constitutional matter, we can perceive no difference between the first subpoena, calling for all non-broadcast materials, and the second, calling only for those non-broadcast materials from which the editors of the broadcast selected portions that were broadcast. The Subcommittee is still insisting on its right to examine the editing decisions involved in selecting materials for the final broadcast, and on its right to judge those decisions according to its own concept of what a proper or correct editing decision should have been—in other words, according to a governmental standard of journalistic truth.

To demand that CBS supply unedited material so that the government can review its editing judgments would have an unconstitutionally chilling effect upon the First

[1] 376 U.S. 254 (1964).

[2] Mr. Justice Douglas did not participate in the decision of this case, but Mr. Justice White indicated his belief that Mr. Justice Douglas would have voted with Mr. Justice Black. *Id.*, at 4704.

[3] The remaining opinion of Mr. Justice Marshall (Mr. Justice Stewart concurring), did not address specifically the question of whether the facts in *Rosenbloom* raised any different First Amendment issues because the report had been broadcast rather than published in the printed press. However, in a case marking a major extension of the *New York Times* rule, which produced sharp disagreement among members of the Court as to what the appropriate limits of that rule for journalists should be, if these Justices believed that different First Amendment standards apply to broadcasters than to print journalists, they would undoubtedly have explicitly set forth such a belief.

[4] In *Rosenbloom*, Mr. Justice Brennan's opinion raises questions even as to whether the decisive element in *Red Lion* was indeed the scarcity of broadcast frequencies. For he suggested that states could adopt a right of reply requirement to ensure "that private citizens will . . . be able to respond adequately to publicity involving them," and that institutionalizing a right of reply is constitutionally preferable to permitting libel damage recoveries. 39 U.S.L.W. at 4700. It had previously been thought by some that rights of reply could only be applied against broadcasters, pursuant to *Red Lion*, but Mr. Justice Brennan's statement suggests that *Red Lion* may ultimately be viewed, not as an example of special treatment of broadcasters under the First Amendment, but as a ruling that in some circumstances a right of reply is consistent with the First Amendment for *all* segments of the press.

[5] The United States Court of Appeals for the District of Columbia Circuit very recently recognized the potential for chilling broadcast journalists in the exercise of their First Amendment rights through the power of the Federal Communications Commission (and therefore Congress) over the broadcast license. The Court stated:

"The suggestion that the possibility of nonrenewal, however, remote, might chill uninhibited, robust and wide-open speech cannot be taken lightly. But the Commission, of course, may not penalize exercise of First Amendment rights." *Citizens Communications Center* v. *FCC*, No. 24,471 June 11, 1971 slip op., p. 27.

Amendment rights of CBS and all other broadcast journalists, and ultimately upon the public's right to see and hear vigorous and critical comment on public affairs. Nor is there any constitutional difference between compelling the production of documents and compelling oral testimony designed to elicit the same information contained in the documents, since the same chilling effect results.

In support of its subpoena, the Subcommittee now appears to be making two additional arguments: first, that, although reporters' notes cannot be reached by subpoena, "filmed outtakes" can be reached, since they "pertain to actual events" and are not "private thoughts"; and second, that there is no chilling effect here because the Subcommittee is not seeking to breach the confidentiality of news sources.

As to the first point, a filmed account of actual events is the result of a series of individual journalistic judgments about what to film, when to film, what to emphasize and what to ignore. Journalists almost always record more than they eventually report; the process of selection and organization is what gives shape and point to the final product. Outtakes are thus as individualistic as the "private thoughts and impressions written by a reporter," and if produced would be equally revealing as to the editing process that creates the published report. And a filmed interview is constitutionally indistinguishable from an interview in which a newspaper reporter makes his own notes or employs a recording device.

As to the second point, the chilling effect upon a journalist's ability to retain confidential news sources is not the only type of unconstitutional "chill" arising from a subpoena of this kind. Any governmental effort to invade the independence of the news gathering and editing process can have an equally chilling effect. As the Ninth Circuit Court of Appeals recognized in *Caldwell* v. *United States*, 434 F. 2d 1081, 1086 (1970), (*cert. granted*):

"The very concept of a free press requires that the news media be accorded a measure of autonomy; that they should be free to pursue their own investigations to their own ends without fear of governmental interference. . . ."

* * * * *

"Further it is not unreasonable to expect journalists everywhere to temper their reporting so as to reduce the probability that they will be required to submit to interrogation. The First Amendment guards against governmental action that induces such self-censorship."

As *Caldwell* expressly recognizes, the reporters' knowledge that their work product is subject to governmental scrutiny and second-guessing will cause them to be timid in performing their news-gathering and news-reporting role. In our opinion, the First Amendment was designed to protect the press and the public from precisely this type of governmental supervision—particularly over the reporting of news about the government itself.

WILMER, CUTLER & PICKERING.

WILMER, CUTLER & PICKERING,
Washington, D.C., June 29, 1971.

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N.Y.

DEAR SIRS: We are writing to supplement the conclusion reached in our opinion letters of April 27 and June 15, 1971, that filmed outtakes, scripts and transcripts, and other non-broadcast materials are the broadcast journalist's equivalent to a reporter's notes, and therefore protected against compelled production by government to the same extent as a reporter's notes.

Supplementation is necessary in light of two facts: (1) a New York court recently decided a case protecting filmed television outtakes from compulsory process; and (2) counsel to the Special Subcommittee on Investigations of the House Interstate and Foreign Commerce Committee, in a legal memorandum to the Subcommittee recently made available to us, has concluded (p. 67) that "no court of law has ever held that outtakes are the equivalent of a reporter's notebook," and denies that there is any legal authority to support our conclusion.

Our opinion letter of June 15 explains why, as a matter of logic and fact, there is no difference between reporters' notes and outtakes. We there said (pp. 5–6):

A filmed account of actual events is the result of a series of individual journalistic judgments about what to film, when to film, what to emphasize and what to ignore. Journalists almost always record more than they eventually report; the process of selection and organization is what gives shape and point to the final product. Outtakes are thus as individualistic as the "private thoughts and impressions written by a reporter," and if produced would be equally revealing as to the editing process that creates the published report. And a filmed interview is constitutionally indistinguishable from an interview in which a newspaper reporter makes his own notes or employs a recording device.

Moreover, there is legal authority to support this conclusion. While the law on this point is sparse, there is at least one statute directly on point, and there are at least three cases (including the New York case) which recognize the equivalency between reporters' notes and a broadcasters outtakes. Section 79–h of the New York Civil Rights Law provides that—

"No professional journalist or newscaster . . . shall be adjudged in contempt by any court, the legislature or other body having contempt powers, for refusing or failing to disclose any news or the source of any such news coming into his possession in the course of gathering or obtaining news for publication or to be published in a newspaper, magazine, or for broadcast by a radio or television transmission station or network. . . ."

The law defines "news" as meaning "written, *oral or pictorial* information or communication . . .," and "newscaster" is defined as a "person who . . . is engaged in analyzing, commenting on or broadcasting, news by radio or television transmission." (Emphasis supplied.)

Pursuant to this statute, which explicitly recognizes the equivalency between "notes" and "outtakes," the New York State Supreme Court, sitting in Extra and Special Trial Term, in Ontario County (per Justice Frederick Marshall), on June 23, 1971, quashed a subpoena directed to CBS and intended to force production of filmed outtakes relevant to the criminal prosecution in the case of *People* v. *Davis*.

The second case involves a California Court's interpretation of Section 1070 of the California Evidence Code, which protects all journalists (including, specifically, broadcasters) against contempt judgments for their refusal to disclose their sources, as preventing compelled production of television outtakes. *See People* v. *Rios*, No. 75129 (criminal), Superior Court for State of California, City and County of San Francisco, July 20, 1970. The Court also found that the First Amendment prohibited such compulsion. In the third case, an Illinois trial court has reached the same conclusion, on First Amendment grounds, without statutory support. *People* v. *Dohrn*, Indictment No. 69–3808, Circuit Court of Cook County-Criminal Division, May 20, 1970.[1]

WILMER, CUTLER & PICKERING.

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[1] Aside from the California statute, there are analogous statutes in ten states, which protect the confidentiality of newsmen's sources and make no distinction between broadcast journalists and news reporters. Ala. Code Recompiled, tit. 7. § 370 (1960); Ariz. Rev. Stat. Ann., § 12–2237 (Supp. 1969); Ark. Stat. Ann. § 43–917 (1964); Ind. Ann. Stat. § 2–1733 (1968); Ky. Rev. Stat. § 421.100 (1962); La. Rev. Stat. § 45:1451–54 (Cum. Supp. 1969); Md. Ann. Code, Art. 35, § 2 (1965); Mont. Rev. Codes Ann., tit. 93, ch. 601–02 (1964); N. Mex. Stat. Ann. § 20–1–12.1 (1953, Supp. 1967); Pa. St. Ann. tit. 28, § 330 (1958).

CBS OPERATING STANDARDS: NEWS AND PUBLIC AFFAIRS

In November, 1959, a memorandum on standards and practices was issued to the CBS News organization to assure that programs produced by CBS News are actually what they purport to be. Since then, to implement this overall objective, a number of memoranda have been issued which set forth CBS News policies in specific areas. The purpose of this memorandum is to collate and restate those policies and to confirm their continuing applicability to *all CBS* news operations.

It is impossible, of course, and inadvisable, to prepare policy guidelines which will cover every conceivable situation which may arise. There are too many variable circumstances—and we must rely, in the final analysis, on the essential good sense and journalistic integrity of the professional journalists employed by CBS around the world. There is a basic underlying guideline, however, which was expressed in a memorandum from Mr. Salant to the CBS News organization in June of 1963 reaffirming the memorandum on standards and practices issued in November, 1959:

"[T]here shall be *no* re-creation, *no* staging, *no* production technique which would give the viewer an impression of any fact other than the actual fact, no matter how minor or seemingly inconsequential. The only way there can be certainty is not to let the bars down at all. Anything which gives the viewer an impression of time, place, event, or person other than the actual fact as it is being recorded and broadcast cannot be tolerated.

"I recognize that strict application of this policy will result in higher costs or in a less technically perfect or interesting 'show' in certain instances. But our field is journalism, not show business."

These are the operating standards which apply to all CBS produced news and public affairs broadcasts, network and station, television and radio:

1. *Filming a news event.* It is essential that CBS personnel not stage, or contribute to the staging—however slight—of any news event or story. Specifically, nothing should be done that creates an erroneous impression of time, place, event, person or fact.

There are some events such as, for example, speeches, press conferences and demonstrations of various types which occur only because coverage by the press is anticipated. The sole factor which determines whether any such event shall be covered is, of course, the basic newsworthiness of the event. But personnel should be alert at all times to the possibility that attempts may be made to "use" CBS cameras and microphones.

Coverage should be as inconspicuous as possible. If, in the course of covering riots, demonstrations, rallies or similar events, it becomes obvious that, but for the presence of cameras, disorders would not be taking place, or would diminish sizably, or terminate, the cameras should be capped or removed. On-the-spot judgments by producers, correspondents, reporters or cameramen that a situation may be eased by capping or removing the cameras will be fully respected.

Producers, correspondents and reporters working with camera crews are responsible for the actions of the crews.

In appropriate circumstances, such as, for example, in the coverage of a space flight, simulations and earlier rehearsals may be broadcast if appropriate disclosure is made.

2. *Interviews and discussions.* This section refers to broadcasts wholly or in part made up of interviews, discussions, forums, debates, and the like, and the term "interviews" will be used to cover all such kinds of broadcast content.

Where an interview broadcast is spontaneous, unrehearsed (other than rehearsal of physical position and movement on camera) and carried in its entirety, it may be identified on the air (opening and closing) as "spontaneous and unrehearsed," and if on film or tape "spontaneous, unrehearsed and not edited."

An interview is considered spontaneous and unrehearsed if not more than an outline of the general areas from which specific questions will be drawn is discussed with or transmitted to the interviewee. An interview is not considered spontaneous and unrehearsed if

(a) questions are submitted in advance to the interviewee; or

(b) there is an agreement not to use a particular general area as the basis for specific questions; or

(c) there is an agreement not to ask specific questions; or

(d) the film, tape or transcript of the interview is submitted to the interviewee after completion so that he may participate in the condensation and editing.

To the extent that any interview is not spontaneous and unrehearsed, that fact must be adequately disclosed on the broadcasts. The interviewee should be advised, prior to his on-camera appearance, that this will be done.

Interviews which are not spontaneous and unrehearsed (i) should be avoided except in unusual cases where the identity of the interviewee and the circumstances of the interview are such that the importance of the proposed broadcast clearly outweighs the disadvantage of the procedure and there are sound reasons for such procedure and (ii) will be permitted, in any event, only upon specific approval by the President of CBS News or the General Manager of the station involved.

3. *Editing.* Editing is an area, obviously, which does not lend itself to broad and universally applicable rules. There are many varying circumstances. But there is one basic requirement. We must continue to be meticulously careful, in all circumstances, that the editing results in a clear and succinct statement which reflects, fairly, honestly, and without distortion, what was said.

Individual reaction and reverse shots made out of natural time sequence are generally a "convenience" technique. They are permissible (except as noted below) but may be used only when they are shot in the presence of the interviewee or his representative or, if the interviewee or his representative does not want to wait around, only after an explanation to him about what is to be done and the receipt of his express consent.

It shall continue to be the responsibility of the editor and/or producer to examine and compare all actual questions with reverse questions, as well as reaction shots and composite editing to determine that there is no distortion or alteration of content or meaning from its original sense. In any case, where the reverse question differs from the original question in tone, in character, or in content, the reverse question may not be used. Reverse questions (and composite editing) shall not be used to clean up a poorly phrased or poorly stated original question.

In broadcasts which consists of a single interview, or in magazine broadcasts where an entire segment is devoted to a single interview in which the interviewer plays a significant part, multiple cameras shall be used, except where space and time preclude it, obviating the need for reverse questions or reaction shots which do not occur at the precise time that the interviewee is saying the words being heard.

In addition to the foregoing, the following rules are applicable to documentary broadcasts:

(a) If the answer to an interview question, as that answer appears in the broadcast, is derived, in part or in whole, from the answers to other questions, the broadcast will so indicate, either in lead-in narration, bridging narration lines during the interview, or appropriate audio lines.

(b) If more than one excerpt from a speech or statement is included in a broadcast, the order of their inclusion in the broadcast will be the same as the order of their inclusion in the speech or statement, unless the broadcast specifically indicates otherwise.

(c) Transcripts of the entire interview will be made available to the interviewee after the broadcast, upon request of the interviewee.

4. *Prerecording and sound effects.* Where a filmed or taped excerpt is used in an otherwise live broadcast and is so juxtaposed with the live segment that the fact it is filmed or taped is not readily apparent, the disclosure that the excerpt is filmed or taped shall be made immediately in connection with the use of such film or tape if the element of time is of special significance.

Whenever a dramatized or re-created scene on film or tape which was originally made for one broadcast or purpose is taken out of its original context and used in another broadcast that fact should be made clear and there should be proper identification of the original source.

Sound may be added when it is needed to maintain the continuity of natural sound already established and when editing techniques require the insertion of segments of a story that were filmed without sound because of technical considerations, such as equipment limitations. In those instances where the maintenance of sound "presence" is necessary, the use of sound should be limited to the minimum required to achieve the effect of sound continuity, and should be limited to natural sound obtained at a time and place related to the story.

Sound effects may not be used with a silent film story to give the impression that the story was filmed with natural sound. However, actuality sound recorded on tape at an event may be used with silent film of the event when the sound segments are compatible with the scenes being used.

Natural sound, whether on film or magnetic tape, may not be magnified or diminished from its actual level for the purpose of achieving a deliberate editorial effect. However, volume may be adjusted to meet technical requirements and the sound intelligibility of a story.

If a speech or a statement is filmed or taped either before or after its delivery before the group to whom it was addressed, it should be clearly identified when broadcast, as having been specially delivered for cameras and microphones.

Reporting that the viewer or listener is being taken to a given locality is forbidden unless in fact a switch is made to that locality at the time of the broadcast. Such a statement is prohibited when the film or tape is being carried not from the original locality but rather has been transported to the place of the broadcast which is other than the original locality.

5. *Film not made in the presence of a CBS correspondent.* Material obtained from stringers and other non-staff sources may be used so long as producers and others involved are reasonably satisfied that the material is what it purports to be. When footage is obtained from other than normal stringer channels, the source should be identified on air and any other special circumstances worth noting, including any doubts about the film, should be explained on air when the film is used.

We must avoid giving the impression that the report of a correspondent is first-hand when it is not. When a correspondent providing narration over film identifies himself, he must always indicate his location. Such identification must be made whenever there is a narration insert in a news broadcast. The lead-in to a film piece should identify the narrator (but not his location). The fact that the narrator was not on-scene at the filming should be further clarified by carefully choosing the operative verb, i.e., John Doe now describes . . . John Doe now narrates . . . John Doe now explains. At the end of the narration over such film pieces, there will be *no* sign-off by the correspondent and the broadcast will move back to the anchor desk for the next news item. Adherence to this practice will avoid the impression that the broadcaster reported from the scene of the story when in fact he did not cover the event.

6. *Correspondents' sign-off.* Where there is a taped insert of a correspondent's report in a news broadcast, it is essential that the public is not given the impression that the correspondent is actually participating then and there in the live news broadcast. Thus, we must avoid even the minor artifice of having a correspondent at the end of a taped report gesture in any way as if to turn the broadcast back to the anchorman.

7. *Payments to interviewees.* In hard news and hard news-oriented broadcasts interviewees will not be paid for participating in the broadcast. Participants in other broadcasts may, of course, be paid nominal sums for releases, as required by the Law Department, to assure our rights to the use of their names and likenesses.

In public affairs broadcasts which are not primarily hard news oriented, payments, in addition to the nominal sums paid for releases, are permissible in the following circumstances:

(a) where the broadcast is built around a single public figure and the broadcast is in the nature of an electronic version of memoirs or is in the nature of an electronic version of an article by a well-known columnist or author;

(b) where a central figure is used for a group of broadcasts;

(c) where professional, non-public experts such as professors, economists, etc., appear on public affairs discussion broadcasts and payment would be in the nature of a lecture fee;

(d) in general public affairs series where, in certain circumstances, important guests in special fields (entertainment, newspaper columnists) can be secured only through payments.

Appropriate fees may, of course, be paid to informants, consultants and others who perform liaison or contact services in connection with the preparation of news broadcasts.

8. *Investigative reporting.* The General Manager of each CBS owned station is responsible for its day-to-day operation. The station's investigative reporting must, therefore, be conducted under his general supervision and control. In exercising these responsibilities, the General Manager shall set up procedures adequate to insure that each investigation is conducted in a manner consistent with CBS's standards of journalistic integrity, accuracy and fairness. While the General Manager retains this day-to-day responsibility for the operation of the station, he is, of course, encouraged at any time to discuss station matters with his superiors. When the General Manager determines that a particular investigation may raise questions of special importance or of interpretation of basic CBS policies, the matter should be im-

mediately brought to the attention of the Division President.

Investigative reporting by CBS News must be conducted under the general supervision and control of the President of CBS News, who similarly will take steps to insure that each investigation is conducted in a manner consistent with CBS's standards of journalistic integrity, accuracy and fairness.

Whether information about a potential crime obtained by CBS personnel during the course of an investigation must be made available to public authorities will depend on the facts of each case, considered in the light of the potential crime involved and the purpose of the investigation. There will be instances when no such notification will be called for (obviously investigative reporting of misconduct by public officials would be frustrated by reporting the investigation to those very officials). On the other hand, if information is obtained that a potential crime endangers an individual's person or property (e.g., arson, rape, murder, riot), appropriate public officials shall be notified promptly.

The Law Department should be consulted prior to the commencement of an investigative project and should be kept advised to the appropriate degree as the investigation proceeds. Our past experience indicates that the extent of Law Department involvement will differ considerably from situation to situation. This does not imply any change from past practice in this area. Our lawyers will continue to be lawyers, not participants in coverage of the news.

Particular reference is made to the following policies with respect to the implementation of the foregoing guidelines.

CBS personnel will not knowingly engage in criminal activity in gathering and reporting news, nor will they encourage or induce any person to commit a crime. There may be exceptions which ought to be made on an *ad hoc* basis even to so absolute a rule. For example, certain kinds of issues have often in the past and might again call for investigative reporting which involves the commission of acts which are in technical violation of criminal statutes, such as, for example, the purchase or possession of hand guns where they are forbidden, or of liquor in a dry state, in connection with a report on how easy it is to acquire these articles. Even such exceptional instances are never to be undertaken lightly. At the other extreme, of course, are acts which cannot be countenanced, no matter how important the subject under investigation, the most obvious example of which would be injury to another person. Between these extremes lie many hard questions. One principal purpose of these standards is to assure that these questions will never be approached without a thoughtful regard for the heavy responsibilities involved.

STATEMENT BY FRANK STANTON, PRESIDENT, CBS, BEFORE THE SPECIAL SUBCOMMITTEE ON INVESTIGATIONS, HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE, JUNE 24, 1971

I appear here today on a most serious matter. I have great respect for the Congress of the United States and for this important Subcommittee. I am mindful of my duty to comply with the requirements of a lawful Congressional subpoena. But I also have a duty to uphold the freedom of the broadcast press against Congressional abridgement. The conflict between these duties is the issue dividing us today. It raises a profound constitutional question going to the heart of the American democratic process.

My appearance is in response to the Subcommittee's subpoena dated May 26, 1971. That subpoena directs me to appear for the purpose of testifying and to bring with me "all film, workprints, outtakes, and sound-tape recordings, written scripts and/or transcripts utilized in whole or in part by CBS in connection with its documentary, 'The Selling of the Pentagon', broadcast on February 23, 1971" except for "materials relating to segments not shown therein" and "official United States Government film that was utilized in the broadcast."

I would like to recapitulate the sequence of events that has led to my appearance here, and then to address the central and serious issues raised by your subpoena.

On February 23, the CBS Television Network broadcast a documentary, "CBS Reports: The Selling of the Pentagon," describing the public information activities of the Department of Defense. The broadcast was promptly acclaimed by many and sharply criticized by others. These criticisms were fully reported by CBS News.

On March 23, in response to the widespread public attention generated by the report, we rebroadcast it. At its conclusion, we broadcast a 22-minute postscript including earlier comments critical of the broadcast by Vice President Agnew, Secretary of Defense Laird, and Chairman Hébert of the House Armed Services Committee, as well as a response by Richard S. Salant, President of CBS News.

On April 18, in view of continued public interest in the substantive issues raised by the broadcast, we broadcast a CBS News Special Report, entitled "Perspective: The Selling of the Pentagon." This hour-long panel discussion presented contrasting points of views on the issues involved. Former Assistant Secretary of Defense for Public Affairs Arthur Sylvester, and General S. L. A. Marshall, a military commentator and historian, generally supported the Defense Department's public information program; Senator Fulbright and Adam Yarmolinsky, a Special Assistant to former Secretary of Defense McNamara, were critical of it.

Meanwhile, on April 7, this Subcommittee had issued a subpoena to CBS demanding the delivery of "all film, workprints, outtakes, sound-tape recordings, written scripts and/or transcripts" relating to the preparation of "The Selling of the Pentagon." On April 20, CBS furnished a film copy of the original broadcast and rebroadcast (with postscript) as well as transcripts of those broadcasts. But CBS respectfuly challenged the Subcommittee's power to inquire by compulsory process into the editing of the broadcast and decline to produce materials not actually broadcast. The Subcommittee then allowed CBS 10 days to make a fuller response.

On April 30, without waiving its objections, CBS voluntarily supplied the Subcommittee with some general information unrelated to the editing process. And in support of its challenge to the Subcommittee's right of inquiry into this matter, CBS submitted an opinion of its counsel that the compulsory demand for production of materials not broadcast, for the purposes described in the Chairman's statement of April 20, was beyond the Subcommittee's power because of the First Amendment, and that CBS was under no legal duty to comply.

On May 26, the Chairman advised us that CBS had "satisfactorily met the requirements of Paragraphs 1, 3, 4 and 5 of the April 7 subpoena," but had failed to comply with Paragraph 2, which called for scripts, transcripts, workprints and other filmed materials not actually broadcast. The Subcommittee withdrew its April 7 subpoena and issued a new one. This May 26 subpoena requires me to appear for testimony and to produce the same materials called for in Paragraph 2, except that the letter accompaning the subpoena disclaimed any interest in transcripts and filmed materials of "interviews or events which did not appear, even in part, in the actual broadcast."

We have carefully reviewed with our counsel the May 26 letter and the accompanying subpoena. They have advised us that in their opinion[1] the subpoena still seeks to compel the production of materials compiled in preparing and editing the documentary but not actually broadcast; that the purpose of the Subcommittee investigation is still to make an official governmental inquiry into the editing process employed in producing the documentary; and that the Subcommittee may not constitutionally compel CBS to produce the subpoenaed materials or give oral testimony for such a purpose.

The First Amendment states that "Congress shall make no law . . . abridging the freedom of . . . the press." Clearly, the compulsory production of evidence for a Congressional investigation of this nature abridges the freedom of the press. The chilling effect of both the subpoena and the inquiry itself is plain beyond all question. If newsmen are told that their notes, films and tapes will be subject to compulsory process so that the government can determine whether the news has been satisfactorily edited, the scope, nature and vigor of their news gathering and reporting activities will inevitably be curtailed.

Our objection does not depend upon establishing that the government lacks power, under any and all circumstances, to subpoena a journalist or his unpublished materials. There are now pending before the Supreme Court several cases centering on the issue of whether the need of information for some important governmental purpose can under certain circumstances be so compelling as on balance to outweigh the repressive effect of such a subpoena. But this Subcommittee's legislative purpose—to prevent "distortions" or to control "editing practices" in broadcast news reports and thereby engage in official surveillance of journalistic judgments—has no constitutional warrant and therefore no benefit that can be balanced against the chilling effect of this subpoena, let alone outweigh it.

Based on the advice of our counsel and our own conviction that a fundamental principle of a free society is at stake, I must respectfully decline, as President of CBS, to produce the materials covered by the subpoena of May 26. For the same reasons, I must respectfully decline, as a witness summoned here by compulsory process, to answer any questions that may be addressed to me relating to the preparation of "The Selling of the Pentagon" or any other particular CBS news or documentary broadcast.

We take this position as a matter of conscience, because of our obligation to uphold the rights guaranteed by the First Amendment. That Amendment embodies our national commitment to freedom of the press. It protects the rights of journalists, not to make them into a privileged class, but to safeguard the liberties of us all by preserving one of the most indispensable elements of responsible democratic government—the right to report freely on the conduct of those in authority. In Judge Learned Hand's famous phrase: "To many this is, and always will be, folly; but we have staked upon it our all."

There can be no doubt in anyone's mind that the First Amendment would bar this subpoena if directed at the editing of a newspaper report, a book or a magazine article. Indeed, the Chairman has been quoted as having specifically conceded this point. However, it is urged that because broadcasters need governmental licenses while other media do not, the First Amendment permits such an intrusion into the freedom of broadcast journalism, although it admittedly forbids the identical intrusion into other press media. If broadcasters must comply with such subpoenas, broadcast journalism can never perform the independent and robust

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[1] Dated June 15, 1971, and submitted herewith.

role in preserving those freedoms which the Constitution intended for American journalism. Only two weeks ago, in a major case applying the First Amendment to protect a news broadcast, the Supreme Court placed broadcast and print journalists on precisely the same footing.

As broadcasters, it is our duty and responsibility in the public interest to resist any government action that threatens to transform a free and vigorous news medium into a controlled and timid one.

I shall, however, do my best to answer questions of the Subcommittee which do not seek to probe so deeply into the news process as to reach specific journalistic practices or the editing of particular broadcasts. The line is a difficult one to draw, and I hope the members of the Subcommittee will bear with me as I deal with your questions. I hope we can achieve a dialogue consistent with the stand we feel compelled to take as a matter of constitutional principle.

As we have previously indicated to the Subcommittee, comments on "The Selling of the Pentagon" have raised important issues as to the practices employed, or that ought to be employed, in the editing of documentary broadcasts. While responsible journalists may reasonably differ concerning particular practices in particular cases, we do not intend to ignore these differences or to shrink from continuing self-examination of our own practices. What we do object to is being subjected to compulsory questioning in a government inquiry, expressly intended to determine whether this or any other CBS news report meets government standards of truth.

The objection I am making has been urged not only by CBS and not only by those who believe that "The Selling of the Pentagon" was an excellent and valuable piece of journalism. The same objection has also been made by many groups and individuals, in and out of public office, who have criticized the broadcast in whole or in part. Scores of newspapers, representing the entire spectrum of political opinion and varying in their views of the merits of the broadcast, have expressed the deepest concern in editorials strongly supporting our position.

Leaders in the nation's educational, civic and religious life have protested the inescapable implications of the subpoenas addressed to us. Professional associations representing every segment of journalism have joined in the protest. These associations include the American Society of Newspaper Editors, the American Newspaper Publishers Association, the National Newspaper Publishers Association, the American Association of Schools and Departments of Journalism, the American Newspaper Guild, the Associated Press Broadcasters Association, the Association for Education in Journalism, the Association of American Publishers, the Authors League of America, the Radio Television News Directors Association, and Sigma Delta Chi. Government officials, including the Director of Communications for the Executive Branch, who criticized the broadcast, and the Chairman of the Federal Communications Commission, have stated their opposition to the subpoena.

I can assure you that we at CBS have not taken lightly either your subpoena or the concern that prompted it. We recognize that journalists can make mistakes, that editing involves the exercise of judgment, and that we and other journalists can benefit by criticism. But I respectfully submit that where journalistic judgments are investigated in a Congressional hearing, especially by the Committee with jurisdiction to legislate about broadcast licenses, the official effort to compel evidence about our editing processes has an unconstitutionally chilling effect.

Let me close with the words of James Madison, written in 1799 and quoted by Mr. Justice Brennan in his opinion announcing the Court's decision two weeks ago applying the First Amendment to protect a news broadcast:

"Among those principles deemed sacred in America, among those sacred rights considered as forming the bulwark of their liberty, which the Government contemplated with awful reverence and would approach only with the most cautious circumspection, there is no one of which the importance is more deeply impressed on the public mind than the liberty of the press. That this *liberty* is often carried to excess; that it has sometimes degenerated into *licentiousness*, is seen and lamented, *but the remedy has not yet been discovered. Perhaps it is an evil inseparable from the good with which it is applied; perhaps it is a shoot which cannot be stripped from the stalk without wounding vitally the plant from which it is torn. However desirable those measurements might be which might correct without enslaving the press, they have never yet been devised in America.*"

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman.

Mr. ADAMS. Mr. Speaker, I have a great number of editorials that have been written around the country in various newspapers running from those that have been labeled as conservative to those that have been labeled as most liberal.

These have previously been referred to by the gentleman from North Carolina (Mr. BROYHILL) and rather than putting them in, I would ask permission of the Chair at this point that I might insert at this point in the RECORD a list of where these editorials come from. There are 122 editorials from 94 papers in 33 States and I insert this list so that tomorrow any of the Members who wish to see any of these from the areas which they represent and, as I say, these represent every spectrum of political opinion, I will have this available on the floor tomorrow.

The SPEAKER pro tempore. Without objection, it is so ordered.

There was no objection.

Mr. ADAMS. Mr. Speaker, the list referred to is as follows:

122 NEWSPAPER EDITIORIALS OPPOSING CONTEMPT CITATION OF CBS

Alaska—Anchorage Daily News.

Arizona—Phoenix Arizona Republic.

California—Brawley News, Los Angeles Herald Examiner, Los Angeles Times (2), Monrovia Daily News-Post, Riverside Press, San Diego Evening Tribune, San Francisco Chronicle, South Bay Daily Breeze, Vallejo Times-Herald, Victorville Daily Press.

Colorado—Denver Post (2), Rocky Mountain News.

Connecticut—Norwich Bulletin, Torrington Register, West Hartford News.

Delaware—Wilmington Morning News.

District of Columbia—Washington Daily News, Washington Post (3), Evening Star (2).

Florida—Jacksonville Journal (2), Miami Herald (3), St. Petersburg Times.

Hawaii—Honolulu Advertiser.

Idaho—Caldwell News-Tribune.

Illinois—Chicago Daily News, Chicago Today, Chicago Tribune, Chicago Sun-Times (2), Freeport Journal-Standard.

Indiana—Hammond Times, South Bend Tribune.

Kansas—Chanute Tribune.

Kentucky—Louisville Courier-Journal.

Maine—Portland Evening Express, Portland Press Herald.

Maryland—Baltimore Sun, Hagerstown Herald.

Massachusetts—Berkshire Eagle, Boston Globe (3), Lowell Sun, Quincy Patriot-Ledger, Christian Science Monitor.

Michigan—Bay City Times, Detroit Free Press, Grand Rapids Press, Saginaw News.

Minnesota—Minneapolis Tribune, Minneapolis Star, St. Paul Dispatch.

Missouri—St. Louis Post-Dispatch (2), St. Louis Sentinel.

Nebraska—Lincoln Evening Journal, Omaha World-Herald.

New Jersey—Bergen Sunday Record.

New York—Amsterdam News, Buffalo Evening News (3), Hotel, Long Island Press (2), New York Times (2), New York Post (4), New York Voice, Newsday (2), Niagara Falls Gazette, Staten Island Advance, Ossining Citizen Register, Utica Observer-Dispatch, Watertown Daily News, White Plains Reporter Dispatch.

North Carolina—Gastonia Gazette, Greensboro Daily News, Greensboro Record.

Ohio—Akron Beacon Journal (2), Cleveland Plain Dealer (2), Cleveland Press, Cincinnati Enquirer, Dover-New Philadelphia Times-Reporter, Toledo Blade, Xenia Gazette.

Pennsylvania—Allentown Chronicle, Easton Express, Philadelphia Inquirer (3).

Rhode Island—Providence Journal (2).

Tennessee—Memphis Press-Scimitar.

Texas—Houston Chronicle.

Virginia—Roanoke Times, Roanoke World-News, Winchester Star.

West Virginia—Charleston Gazette (2), Elkins Inter-Mountain (2), Wheeling Intelligencer.

Wisconsin—Milwaukee Journal.

Wyoming—Sheridan Press.

MAGAZINE COMMENT SUPPORTING CBS (12)

Broadcasting (2).
Columbia Journalism Review.
Commonweal.
Editor and Publisher.
Life (editorial).
NEA Syndicate.
Television/Radio Age.
Variety.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. MOSS. I yield to the gentleman.

Mr. PICKLE. Mr. Speaker, tomorrow and at other times those of us who are for the chairman's position will also insert in the RECORD articles from major newspapers, some in my State, supporting the position of the committee.

I think the gentleman from Washington will also find that this will be true in other news media over the country.

The proponents, or the group representing the network, have indicated, and some publishers throughout the country, have supported strongly their position. I think perhaps they have, as an executive board, so voted, so I do not challenge the correctness of the statement so far as it goes.

But there are many people, journalists, both in the news field, radio, and the television media who have said they do not want to be associated with the position that they can do no harm; and they do want the truth known, and they do want correctness in reporting, and particularly as it pertains to the questions and answers.

I think the gentleman from Washington will find as we go along that a great many other journalists will also be saying these facts should be known. So it is more than one-sided—it is a grave matter and perhaps a very grave constitutional question. But it is not one that we all approach with happiness on either

side. There are people who strongly believe that the full facts should be known and the committee takes the position that we will not know the true facts until these outtakes are furnished in this particular instance.

Mr. Speaker, I thank the gentleman for yielding.

Mr. MOSS. I want to say to the gentleman, as I said at the time the gentleman from North Carolina yielded to me under his special order, that I would hope the Members, as they approach this very serious and somewhat onerous responsibility tomorrow, will do so on the basis of a thorough study of the record. I would not want to weigh the numbers of editorials for or against as the basis for making a judgment. This is our responsibility as Members of this House. This is an issue involving the privileges of this House, and that is why it is coming before us tomorrow as a highly privileged piece of business. We should not act because of any bias for or against the press in the broad sense, including the broadcast media. We should act only when we have determined that there is a need to cite. It is my judgment that there is no need in this case, and I would hope that the consensus of the House would support that conclusion. If it does not, then I am afraid the House will experience another frustration and perhaps add fuel to the forces who always like to look at the courts and say, "Well, the courts are legislating again." If we did not send them bad cases, we could not get them in the position of having to make rulings that tend to offend us.

Mr. Speaker, I yield back the balance of my time.

AMBASSADOR GEORGE BUSH SPEAKS TO BUFFALO WORLD AFFAIRS COUNCIL

The SPEAKER pro tempore (Mr. LINK). Under previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 5 minutes.

Mr. KEMP. Mr. Speaker, it was fitting, indeed, that Ambassador to the United Nations, George Bush, came to Buffalo Memorial Day weekend. It was a time of remembrance for those Americans who died in our wars—who died not for glory or for conquest, but for the principles of human freedom that alone bind us together in nationhood and brotherhood. And appropriately the best memorial to our war dead would be a more effective United Nations for the prevention of wars and a peaceful settlement of international disputes, something the Buffalo World Affairs Council has been working so effectively toward for years. In the quarter century since the founding of the U.N., our dream of peace has not been realized, but the dream has not been forsaken. It is a good dream, worthy of our continued striving.

In many ways our daily and almost existential involvement in the cold war has obscured the progress that has been made in building the effectiveness of world cooperation.

Although it has not been possible to fulfill the expectations and hopes which were raised as the U.N. came into being, it must at least be recognized that a beginning has been made.

On balance, the record shows that the United Nations strength and influence have grown not only in spite of the conflicts it has encountered, but also because of them. Perhaps less noticed and publicized than the political problems that confront the Security Council and General Assembly are the successful programs being carried forward by the many specialized agencies of the United Nations, such as the World Health Organization, the Children's Fund, the Economic and Social Council, the technical assistance program, the International Labor Organization and others, some of which antedate the world organization itself. These have rendered the world significant services which are gratefully acknowledged by their recipients.

Whatever its weakness as an international peacekeeping force—though its success go unpublicized—the U.N. still provides a forum for discussion, a common meeting ground, and a mirror of world opinion without which international relationships would be even more difficult to reconcile than they are now.

In short, the imperatives of the modern world demand progress in international cooperation with perhaps some justification and confidence that a lasting peace can be achieved. At Vienna there is a significant breakthrough in our discussion to limit the arms race; in the Mideast the ceasefire is well into its second year; the chance for rapprochement with China are increasingly optimistic; and the chance for negotiation with Russia the mutual reduction of troops around the world is a very real possibility. To the idealists who long for a perfectly unified world all this, of course, is poor consolation for the lives of so many brave men, but on the balance, as the noted columnist, James Reston of the New York Times mentioned recently:

> There is something to remember this Memorial weekend that is not entirely depressing. Underneath the troubled waters on the surface of the earth there are deeper tides running.
>
> Hopefully, these deeper tides will bring the type of peace not only that we as adults want for our generation, but that we so desperately want for the generations to come.

Our U.S. Ambassador to the United Nations, George Bush, is uniquely qualified to help provide the leadership in the world community.

And, Mr. Speaker, it was indeed fitting and proper that the program was sponsored by the Buffalo World Affairs Council. This group for some time has been actively engaged in promoting ideas to further the cause of world peace.

At this point, I include the remarks of Ambassador Bush:

SPEECH BY AMBASSADOR GEORGE BUSH

Thank you Mr. Congressman. I appreciate that very warm and friendly introduction by my good friend Jack Kemp. My only regret is that I went out of the Congress at the same time he came in. You're fortunate in having such an able representative in Congress. We've been friends for some time and when he passed along your invitation to come here tonight I was happy to have a chance to come back to Buffalo after twenty years.

It's a great pleasure to be here to speak to the Buffalo Council on World Affairs. And I want to make a few general comments about the United Nations, that much-misunderstood body—that crazy organization on the East River—suffering from the overpromises of the Forties, and now struggling to fulfill the promise of its second 25-years.

I came there a very short time ago, some four or five months—appointed by the President to a tremendously interesting job. I came as a critic, a supporter, but a critic. I have a theory that the U.N. had been clutched to the breasts of some fundamental believers in the Forties and they were reluctant to share it with America.

One of the problems has been that the U.N. has been vastly misunderstood by a majority of people. You people may believe far more than others—but you walk down the streets of Buffalo, New York . . . find out just how much support there is for the United Nations. I think you would have to agree that it's at relatively low ebb. People are kind of "ho-hum" about it . . . they'll say, "Yes, in the final analysis, we need it for world peace", but there's very little enthusiasm.

What I want to tell you tonight is that in a very short time I've come to realize that there is much at the U.N. that if the people in this country understood, or knew about, they would support and support enthusiastically. I wanted to comment just a little on some of these things.

Let me say that it's very easy for me to represent the President of the United States in the United Nations. He has a good grasp of foreign affairs. Controversial though he may be, in some areas . . . this man is an expert in this field. You only have to look at some of the things developing in the world—or some of the things that *haven't* happened in the world to understand why my job is easier with the kind of leadership we have at the top.

On de-escalation—moving out of a troublesome war. Though the U.N. Has not been "seized with it"—as we say in my new diplomatic parlance—it's in every corridor and it permeates every thought. It permeates every meeting. The President is moving us out of this war, his critics to the contrary notwithstanding.

The other day you saw a major announcement which may or may not lead to an agreement on disarmament between the U.S. and the Soviets. The U.N. isn't exactly "seized with" the question of the SALT talks but it again permeates the corridors and it permeates the hopes and aspirations of the entire U.N. organization. Hopefully the announcement that the President made after the Cabinet meeting the other day will be followed by an agreement on this very critical area.

On China. A serious question faces us and will be on the agenda again in the General Assembly this year. The President made overtures to the people of China as long ago as a year-and-a-half. I was somewhat troubled when I saw Chou En-lai getting the credit for this. The President a year and a half ago demonstrated a certain flexibility on travel restrictions and on trade, that extended our tentative opening of the door to the Peking Government. Of course this fall we're faced with the question of Chinese representation in the United Nations.

Then you have now a possibility for negotiation on mutual troop reduction of our forces and Soviet forces in Europe. That could effect the life of everybody in Buffalo, New York, in Houston, Texas and across the country.

As Jack pointed out, I think appropriately,

we don't have peace in the Middle East . . . (and sometimes you know I think you should count your blessings) . . . but people aren't shooting at each other in the Middle East, and we can't relax in the four power talks that I attend every two weeks; in fact I'll be at one this week.

Representing our country in these talks with the Russians and the French and the British, we discuss guarantees, hoping to have something *to* guarantee down the line. But I think it's fair to look back and see that not so long ago we had a much more uneasy situation in that troubled corner of the world. We are concerned . . . and we have much to be worried about. The quest for peace may not be just around the corner. But in the Middle East I think the policy of Secretary Rogers . . . with the blessing, of course, of the President . . . has been the correct policy. I think it's one that has U.N. participation.

I think of the United Nations somewhat as a ball club that's lost some ball games . . . and, in the country's eyes, I think that's a true comparison. I'll go to the campuses and the kids say . . . "You know, we're turned off by Vietnam, nobody in the U.N. can do a darn thing about peace in Southeast Asia". Fair criticism! The United States Government has made some thirteen overtures to the United Nations to get them to come to grips with this question. As recently as when I was confirmed by the Senate—I suggested that possibly the UN Security Council could take a look at the Laos situation. I'd like to have seen it considered there. I'd like to carry the American side of that debate in the Security Council, I'll tell you! Then we could weed out some of the irrationality and see who is to blame. We could pinpoint the source of real trouble in Southeast Asia as far as Laos is concerned. But the kids say, "Look! the UN has failed us we haven't been able to bring peace to Southeast Asia," . . . and I say give them one. They're right and the U.N. hasn't come to grips with this. I think it's fair to be critical and I think it's fair to take a look at the negative side.

But I've found, just in this short period of time since I've been there, that there was a little crisis over in Iran and Bahrein that nobody heard much about, that was solved by the UN. I can remember a few years ago when you heard a lot of talk about the Congo . . . the UN had failed . . . this is the end, you know . . . Communism in the Congo. One of our fiercest, strongest allies today in Africa is the Congo.

We had a Security Council meeting this last week on Cyprus. You don't think of Cyprus. It's not in the news much . . . but there's a UN peacekeeping force there, keeping the lid on in a very difficult situation between the Greeks and the Turks and the whole Cyprus Government situation. The same in Kashmir. The same in different dimensions, of course, in the Korean situation.

And so there are segments, in this political area where the UN is considered to have been a failure that are successes. There are crises that were very small ones and were snuffed out before they grew into ideological confrontations between the superpowers. So I suggest to the Critic . . . No! we haven't solved the problem of Southeast Asia . . . sure we have failed to bring peace through the UN to Vietnam . . . but, yes! Look across the board at some of these crises that could have been blown into a world war and weren't, because of the United Nations.

You know Yogi Berra was the manager of the Yankees for awhile but he got summarily canned for doing a lousy job. But he remains one of the great philosophers. They asked him, "What went wrong, Yogi, your final year as manager?" And he said, "Well, we made all the wrong mistakes!" You've got to think about that one for a minute.

But anyway . . . the UN at its founding, made some of "the wrong mistakes." It's an unreal world. You may not like this . . . and it may offend some of the philosophers in the crowd. But in a UN organization where the vote of the United States is exactly the same as the Fiji vote or where ever it may be, it's unreal . . . and this is one of the things that turns off some of the support that the UN should have from the American people.

Henry Cabot Lodge, with some able citizens . . . and maybe there were some from Buffalo on this Lodge Commission, completed across the board and transcending political party or liberal or conservative ideology, a reassessment of the United Nations. If you haven't read it, and if you're at all interested in the UN, you ought to get a copy of it. You ought to take a look at it. You ought to read it because what Lodge and this Commission ably did was to face up to some of the problems of the U.N. and some of the weakness of the UN so that we could be made stronger in the next 25 years.

We've got a fellow up in our Mission name Al Bender—been there a long time . . . and every time Mr. Bender comes to see me I wince . . . I always think I've got a problem . . . but when I see him I *know* he's got more problems than anybody else. The reason is that his problem is dealing with the financial affairs of the United Nations. And if I ever start feeling good in the morning, all I have to do is address myself to the financial dilemma that is facing the UN and my day is taken care of . . . I'll feel lousy for the rest of the day. It's a wonderful thing to have such a kind of leveler in your midst.

For years we hoped that this problem would go away. It's not going to go away. The United States can't unilaterally bail the UN out again and retain the support of the people of Buffalo, New York or any other place in this country. We've got to now face up to a very tough period of negotiations with the Soviets and the French and we've got to call a spade a spade.

We're going to have to say to the world, "If you believe in this thing you're going to have to bail it out . . . and the United States will do its part, but it's not going to do it unilaterally. If you don't believe enough . . . if other countries don't believe enough . . . to help . . . then I suggest the UN is indeed an unrealistic world. If once again the taxpayers of the United States have to bail this thing out unilaterally, then it's a very serious problem . . . and it's not going to go away . . . We've got to spend a whale of a lot of time working on it.

I mentioned the problem of the mini-states . . . I mentioned the overpromise of the Forties. You know, when the UN was founded (I think each of us will recall) there were those among us, many of us here, who had just been through a hellish world war, who hoped in the bottom of our hearts that this would be the answer to world peace. Then we woke up and for various reasons . . . some of which I clicked off here tonight, we found that that there wasn't any instant peace. We found that the realities of the world, with . . . the super-power confrontations, meant the UN would have a more limited role than some of us would have liked to see . . . and when you ask people about the failures they'll click off the obvious political failures.

However, the thing that I've discovered, and the thing that I'm enthusiastic about, is there's a whole effort going on at the United Nations that the American people don't even realize exists . . . in the whole economic and social end of things. Many things . . . and I want to point out just a couple. Environment! Now there's a marvelous effort! You know many people are just gradually discovering that pollution doesn't know any national or international boundaries. Its east and west . . . It's Communist and non-Communist in Europe. Hopefully, a little friendlier across the river here in upper New York.

But you've got a major environmental effort underway now that can do as much for eliminating tension and getting to some of the causes of war as almost anything you can think of. We hope, if the Stockholm Conference goes well, that out of that will come some mechanics that will eliminate some of the causes of tension that the problems of the environment cause.

Another area is population. It was a question I was vitally interested in when I was in the Congress of the United States . . . and there's a whale of an effort going into population problems. It's not an effort to force our mores (or folk ways as the sociologists say) on some developing countries. When some lesser developed countries talk about it and resist it, talking about genocide, they're not getting what this is about. What we're talking about is the unwanted child in India or Pakistan or Africa or the United States for that matter. How in good conscience can your heart not feel something just on a pure humanitarian basis? You've got to come to grips with the problems of population . . . and the UN is the vehicle. The multilateral agencies are the vehicle in which to do something about it.

There's the area of narcotic problems! Jack, I'll bet you get hundreds of letters on the question . . . every Congressman does. It's on the mind of every parent, every kid . . . everybody in this country. Thru the multilateral agency that is the UN, we have a vehicle now (if it doesn't get buried under layers and layers of bureaucracy and red tape) that can do something at the source of the narcotics problem. And it's worth our energy . . . it's worth our effort . . . it's worth the time of the United States Ambassador . . . and it's also collaterally worth taking my time to get around this country and tell some of the people about some of these things that go on there.

Let me repeat my thesis that the average person in America simply has no idea . . . and, Jack, this is true of the Congress . . . the average Congressman does not know that these things are happening . . . then his constituents don't. You can't expect them to. So I think we've got a big educational problem to do, telling the people what is really being done at the U.N.

You know, this winter I took a trip to some of the great agencies of the UN. I went to the World Health Building . . . a tremendous building . . . in danger of too many people . . . in danger of inefficiency. One of the doctors there pulled a picture out of his desk, and gave it to me. I keep it in my desk for a couple of reasons. To make me count my blessings every day . . . to remind me of some of the positive aspects realized through U.N. agencies. There's this little child . . . hands covered . . . face totally covered with sores. What is it? Smallpox . . . I always thought smallpox was something that affluent people fend off by having some good doctor innoculate our child . . . and yet just a year ago smallpox was a major problem, caused a major epidemic across Africa. Then the UN got geared up thru the World Health Organization . . . did a tremendous job of stamping out this disease from all but one tiny corner of Africa.

Tiny little story . . . but if you take it and multiply it by hundreds of other stories like this . . . then I submit to you such an organization is worth battling for . . . it's worth believing in . . . it's worth telling the American people about . . . and so in this whole economic and social end of things . . . as a separate area apart from the political end of things . . . there's action . . . there are things you can identify with . . . there are things that you can believe in. I wanted to pass it along because the President has instructed me very clearly not to de-emphasize it.

The Soviet Ambassador said to me the other day . . . fascinating man named Jacob Malik who was an Ambassador to Japan 32 years old in 1942. He was the Ambassador when the Nuclear Bomb went off. He was talking to me the other day about this whole economic and social end of things and he said, "What do you want to do? Make this into a vocational school?" I said, "No, we don't want to make this into a vocational school. What we want to do is eliminate the pressures . . . and eliminate the basic causes of war before they even get to the political arena." And I'll be there with him eyeball-to-eyeball when it comes time to see who's right or who's wrong around this world. I kind of look forward to it . . . in the political end. But I hope, if we do our job correctly in the economic and social end of things, that we'll have fewer large-power or small-power confrontations in the UN itself.

I mentioned the other day, in a speech in New York, a theory. Not an idea so particularly brilliant or so particularly original. I wish it could happen in this country. You see, I believe that if the UN met periodically in other places in the world that this would revitalize the United Nations. I think it needs a permanent home . . . I think it has to have it . . . and I think we've got a good one (all our problems notwithstanding) in New York. But I also believe that if the Economic and Social Council could meet in Africa . . . if the General Assembly itself could meet in Moscow once in a while, the world organization would be much more vital.

The Secretary General, U Thant, endorsed this idea the other day as far as where the Security Council could meet. It would be less unwieldy . . . fewer people, but it would take the International Organization to the people of the world just as when President Nixon took the Cabinet around this country. Cabinet meetings! I go to them every other week . . . but there's not a word in the paper about them for the most part . . . it's right in Washington. But when a cabinet meets in Chicago . . . or in Cleveland or wherever it might be, this is news and its important and there's a certain taking of the government to the people . . . and the same thing can be true in the United Nations. This won't solve all its problems, but it can help revitalize interest in it.

And so let me end this way . . . I think that the UN offers a tremendous promise to this country. I recognize its short-comings, but in a very short period of time I have come to believe that this charter phrase about "eliminating the scourge of war" is not unrealizable but indeed, given the nuclear capabilities not just of our countries . . . but now the fledgling one of China . . . and certainly the others who possess nuclear weapons, that peace might be closer rather than farther away. I think that there is a realization of the horrors. But I also think that the UN can be stimulated and revitalized and streamlined.

The challenge of the UN is even greater now than when it was founded some 25 years ago. I really believe it . . . I think we're coming into a new era, and I hope that each of you in this Buffalo Council will take a little time to educate your neighbors about this challenging organization. It's indeed a great pleasure for me to have had the opportunity to be with you tonight.

TAKE PRIDE IN AMERICA

The SPEAKER. Under a previous order of the House, the gentleman from Ohio (Mr. MILLER) is recognized for 5 minutes.

Mr. MILLER of Ohio. Mr. Speaker, today we should take note of America's great accomplishments and in so doing renew our faith and confidence in ourselves as individuals and as a Nation. When the present administration's effort was inaugurated in May 1969 with the Presidential "Hunger Message," 6.9 million needy persons were receiving food under programs administered by the Department of Agriculture. At the close of calendar year 1970 the number was 13.2 million.

PANAMA CANAL TREATY NEGOTIATIONS: AMERICAN PEOPLE WILL NOT TOLERATE POLITICAL BLACKMAIL

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Pennsylvania (Mr. FLOOD) is recognized for 10 minutes.

Mr. FLOOD. Mr. Speaker, in an address to the House of Representatives on June 17, 1971, on the subject, "Panama Canal: Intense Panamanian Hostility Against the United States," I quoted excerpts from the Spanish language press of Panama from January 5 to June 4, 1971, clearly setting forth the openly declared aim of the Panamanian leftist revolutionary government to wrest sovereign control of the Canal Zone territory from the United States, some of them in red headlines. This was followed by other addresses on correlated subjects: on June 21, "Storm Clouds Over Panama"; on June 29, "Panama Canal: The Question of Sovereignty"; and on July 7, "Panamanian Diplomats Demand Control of the U.S.-owned Canal Zone." The last quoted the full texts of newsstories in the Panama Star & Herald of June 20 and 26, 1971, clearly setting forth the revolutionary government's objectives.

From a review of published material it is clear that the present regime in Panama has been whipping the people of that country into a frenzy of hatred against the United States with implied threats of violence for use as political blackmail. The Congress and the Nation at large should know what is transpiring, for the American people will not tolerate a surrender at Panama.

As I have stated on many occasions, the Panama Canal enterprise consists of two features: First, the canal itself with its vital structures and, second, its indispensable protective frame of the Canal Zone, all owned and controlled by the United States with full sovereign rights, power, and authority to the entire exclusion of the exercise of any such sovereign rights, power, or authority by Panama.

The Panamanian objectives in the current negotiations as shown by the latest Spanish language press of Panama call for their negotiators to conform with the following:

Elimination of the Canal Zone.

Permitting the United States the privilege of operating the canal.

Realizing the full destiny of Panama and complete elimination of the "colonial situation" allegedly existing in the Canal Zone.

Recovering sovereignty, national integrity, and dignity.

Returning with no treaty in event of ability to secure the objectives of the Panamanian revolutionary government.

The full intent of the propaganda campaign now prevalent in Panama is obvious: By implied threats of renewed violence in event of failure to secure demands to intimidate our own negotiators into accepting Panamanian sovereignty over the Canal Zone territory.

The immediate action clearly indicated for our Government to take is the adoption by the House of Representatives of the pending Panama Canal sovereignty resolutions that are supported by such national organizations as the American Legion, which strongly opposes any further diminution of U.S. control over the Canal Zone or Panama Canal. Unless the House expresses its views as indicated in the pending resolutions the United States may be faced with a fait accompli that can only anger the people of the United States and disappoint Panamanian hopes with resulting violence with loss of life and destruction of property such as occurred in January 1964 and was threatened after the exposure of the 1967 draft treaties that were repudiated by the people of both Panama and the United States.

In partial support of what I have stated, I quote the following excerpts from recurrent issues of the Spanish language press of Panama:

PANAMA CANAL INFORMATION OFFICE DAILY DIGEST OF NEWS AND EDITORIAL OPINION OF PANAMA NEWS MEDIA

El Panama America, June 25:

"The elimination of the Canal Zone: Panama's aim in the negotiations with Washington" is the top-of-the-front-page headline over a report on the Panama negotiators' meeting with the press before departing for negotiations in Washington. According to negotiator Fernando Manfredo, Panama aims for jurisdiction in the Canal Zone, permitting the United States the privilege of operating the Canal. He is quoted as saying that the negotiators visited Canal installations and were very well received by Canal Zone officials. As a result of the visit, they arrived at the conclusion that Panamanians are capable of offering the services that the United States now provides. The negotiators said they aim for a treaty which will eliminate causes of conflict between Panama and the United States and if the U.S. does not accept Panama's demands they will return without a treaty.

La Hora, June 25:

Large red headlines on the front page say "The Negotiators Talk, The Treaty Is a Disgrace". Other statements made were Panama Is Sovereign In The Canal Zone"; "Panamanians Have Not Forgotten The January 1964 Aggression"; "The Panama People Are United". A map of Panama appears on the front page with the Panamian flag raised over the Canal Zone.

La Estrella, June 26:

Pictures of the press conference held by the two members of the Panama Treaty negotiating team appear on the back page. In a story accompanying the picture is a statement by Dr. Lopez Guevara who said there exists a promise between Panama, the United States and the Organization of American States to eliminate the points of friction existing in the 1903 treaty.

El Panama America, June 26, morning edition:

"'We will return with dignity even if we come back without treaties,' Lopez G." is the top-of-the-front-page headline referring to the Panama negotiators' meeting with the

press before leaving for Washington. The meeting opened with the negotiators discussing the position of the Revolutionary Government which is the complete elimination of the colonial situation existing in the Canal Zone, says the story.

Editorial:

In the editorial "Mission in Washington" beginning on the front page, the writer gives a history of the 1903 Treaty and Panama's struggle in defense of its rights. He contends that Panama, through unilateral application of the 1903 Treaty, became a dependent state by having to give up jurisdiction in the Canal Zone. Times have changed since then and international law of today has put an end to colonialism, says the writer, adding that according to the Strategy for Development in the Decade 1971–1980 of the United Nations, the Canal is not a United States business nor a Panamanian business but an instrument for national and international development. And Panama needs the Canal Zone for development of its metropolitan area, for expansion of the Colon Free Zone. It needs the ports of Balboa and Cristobal to develop its potential as a seaport country and it needs the fresh water resources of the Chagres River. With the return of the Canal Zone territory and its natural resources, Panama could reach its full destiny, says the writer. That is the mission of the Panama negotiators in Washington.

Columnists:

Jorge Enrique Ramirez has faith in the Panama negotiating team. He says they have shown their patriotism by saying they prefer to return with no treaty at all then one which does not fulfill the interests of the people. The people will be informed on the progress of the negotiations when the time is opportune, says the columnist.

Luis Restrepo refers to the mission of the Panama negotiators and says that this is the first time in the history of negotiations that Panama's representatives have spoken so clearly and precisely on the aims of the negotiations. He notes that this time, no treaty will be imposed on Panama, nor will Panama accept anything less than its aim. The negotiators have accepted a solemn promise to the Panama Government and the people they will come back with no treaty at all if their demands are not met. Other means will be found for Panama to assert its rights.

Editorial:

The editorial discusses the mission of Panama's negotiating team in the Canal treaty negotiations. In the past, Panama negotiators have felt obligated to return to Panama with some kind of document no matter how damaging to Panama's interests, says the writer adding that the situation is different today. Panama will accept nothing less than complete jurisdiction over the Canal Zone. According to the United Nations Charter, only the Panama Government can exist in Panama and that is Panama's position. Should the negotiators not achieve the aims of the country, they will return empty handed but with their dignity, says the editorial.

Critica, June 28:

"The Panamanian people will take part in the negotiations for a new treaty," is the headline used on page 18 over a story announcing that the treaty negotiators will leave for the United States soon to start the negotiations.

Editorial:

The main editorial notes the departure for Washington of the Canal treaty negotiators and says that the position of Panama has been definitely fixed, which is to eliminate once and for all the points of conflict which started with the 1903 treaty and resulted in a U.S. colony in national territory. The writer says that in the words of the late President Ramon, Panama does not want charity, or millions, it wants justice. And as General Torrijos says, "Sovereignty is not to be negotiated. It is the right of the Panamanian people." The martyrs of 1964 died by bullets of assassins but the ideal did not die. One country from border to border, the writer says.

La Hora, June 28:

A back-page story says Panamanian negotiators Dr. Carlos Lopez Guevara and Fernando Monfredo left Panama to go to the United States to start negotiations on the new Panama-Canal Treaty. The negotiators had previously reported to Panamanians in different conferences that the goal of the new treaty is to eliminate the existing causes of conflicts of the 1903 Treaty.

Columnists:

The column "Que Dice la Gente" says the newspaper is receiving many telephone calls from people in various parts of the country who wish to express their support of the Panama negotiators and Panama's position regarding the new treaty.

El Panama America, June 20 (morning edition):

The top-of-the-front-page headline, "Panama's Aim Is To Recover Sovereignty and National Integrity," is taken from an article on the Panama Canal problem published in the El Universal of Mexico in its June 25 issue which is reproduced beginning on the front page and continued on page 10–A. The story says the economic aspect of the Canal is not the main issue: that regaining sovereignty and national integrity, which were lost with the construction of the Canal and the 1903 Treaty is the aim of the negotiations.

El Panama America, June 30, morning edition:

A Washington-datelined UPI dispatch on the Canal treaty negotiations, on the front page, carries a five-column headline that says, "De la Ossa, Lopez and Manfredo begin revindication efforts in Washington."

Critica, June 30:

"Negotiations Start Again in Washington" is the front-page headline over the story from Washington saying that Panama and the United States have started negotiations on a high level for a new treaty for the Panama Canal.

The Panama Power and Light Company (Fuerza y Luz) has asked for reconsideration of the ruling issued by the Panama Electric Commission that rates be reduced 15½ percent, a front-page story says.

Columnists:

The column "Reflexiones Matutinas" says the decision of the Panama people to get the 1903 treaty with the United States abrogated is reflected in the public statements of the members of the negotiation team. The writer says the people feel that this treaty, which permits a powerful nation to set up a colony in the middle of national territory, must go. The nation faces the future with dignity when the negotiators promise that even if they return without a treaty, they will return with dignity.

La Estrella, July 1:

A Washington-datelined AP story, referring to the Canal treaty negotiations, is given lead position with five-column headlines that say, "The Negotiations for a New Treaty are Foreseen as Difficult."

Criticia, July 1:

Columnists:

Moyolandia says two things bother him about the treaty negotiations. He wonders in what language the talks will be conducted and how many treaties is Panama going to negotiate. Other treaties, including the 1903 treaty, were in English first, he says. He feels that Panama is at a distinct disadvantage. In addition to being a weaker nation, it must make treaties in foreign language. He also remarks that the Canal Zone and all operations not directly related to the maintenance and operation of the Canal must be eliminated.

El Panama America, July 2 (morning edition):

Columnists:

Luis Restrepo refers to the AP dispatch from Washington on the canal treaty negotiations which appeared in the Star and Herald July 1 and which said that the negotiations would be difficult. He comments that Panama realizes that the negotiations will not be easy but it is prepared to overcome all obstacles because it knows that it is in the right. As part of the campaign to distort the truth about the Canal, he claims the United States is stressing its investments in the Canal and the figure of $5 billion as used in the story is misleading. This figure is usually quoted as the amount the U.S. has invested since the Canal was built, he says. To report on the benefits the U.S. has received from the Canal would make a more accurate story, says the columnist, pointing out the economic, political and military benefits the U.S. derived from the Canal since its construction.

VOLUNTARY QUOTAS BY ITALY ON THE EXPORT OF NONRUBBER FOOTWEAR TO THE UNITED STATES

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Massachusetts (Mr. BURKE) is recognized for 10 minutes.

Mr. BURKE of Massachusetts. Mr. Speaker, considerable attention has been focused this weekend in the press on the announcement last week of the Italian Government to accept voluntary quotas on the export of nonrubber footwear to the United States. The announcement is obviously a welcome one and if put into practice will help to curb the flooding of our markets by cheap foreign footwear—at least from Italy. But, that is just it; unless the action of the Italian Government is followed by similar action by the Spaniards, these restraints on the part of the Italians may well be offset by increased efforts on the part of Spanish shoe manufacturers. Lately, there has also been an increase in imports from Greece and the Orient in footwear products. Again, restraint by these countries is essential if the Italian announcement is to bear any real fruit.

At this point, the only sensible reaction to the Italian announcement would appear to be one of cautious optimism. It certainly is no time to bury the idea of trade reform legislation. This would appear to be an extremely hasty reaction, indeed. It is this aspect of this weekend's press reports that bothers me the most. Administration sources are quoted as indicating that the Italian announcement obviates the need of quota legislation. I am convinced that we would not have got as far as we have if it were not for pressure on the administration from Congress for action to protect shoes. I am, consequently, convinced that it would be premature to relax our pressure because one country, albeit an important trading partner, has made an in-

formal commitment to keep its level of our market at last year's level.

THE SHARPSTOWN FOLLIES—XII

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GONZALEZ) is recognized for 10 minutes.

Mr. GONZALEZ. Mr. Speaker, the papers down in Houston report interesting doings in the Sharpstown Follies.

The local U.S. attorney in Houston, Anthony J. P. Farris, claims he has lost 25 pounds and one of his three chins since taking on his job. Unfortunately in the process of losing one of his excess chins he seems not to have lost any of his cheek, which is a British way of saying chutzpah.

The U.S. attorney in Houston has just gotten a banker to plead guilty to a charge of false entry, the same charge that Frank Sharp admitted being guilty of. This banker drew a sentence of 5 years and a $5,000 fine—the maximum. While admittedly it is a different case, the contrast could not be much more startling.

Here in one case, with the identical crime, we see a maximum sentence. There is no probation, there is no immunity granted, no deal of any kind as far as I know. It was a different banker, a different judge and a different day in court. And there was definitely no deal between this banker and the Department of Justice.

In comparison to Sharp, this fellow was a mighty small fish. Like Sharp, he might have been involved in some fantastic deals involving the Bank of Sark in this case—but not as the key man, only as a little operator who helped kite paper. Sharp, on the other hand, was the key man who set up fantastic deals.

Now, how is it that the Justice Department can enter into a bargain with Sharp, who created and engineered and carried out huge schemes that milked millions of dollars, and not enter into a deal with a little old guy who just got greedy? Why is it that the one will go to jail for 5 years, and that the big manipulator, the grand schemer, the fantastic fraud, gets off with probation, a dinky little fine, and clean immunity for all his other crimes?

Surely, these two men created their own beds—they both committed, in a technical sense, the same crime. Far be it for me to second-guess our worthy courts. Yet I cannot believe that the Justice Department could have played no role at all in these disparate sentences. The fact is that Mr. Anthony J. P. Farris made a deal with Frank Sharp to keep him out of jail, and he did not make a deal with the other fellow, who entered the same plea to the same crime, but, unlike Sharp, drew the maximum sentence. Sharp was a mighty big fish. The other fellow by comparison was not even a tadpole. But Sharp is off the hook, and the other fellow is caught, hook, line, and sinker.

Now, Mr. Anthony J. P. Farris says that he might never have been able to make a case against Sharp, so he took what he could get. But the other banker was involved in a scheme that Justice Department folks call a prosecutor's nightmare because it is so complicated. Yet Anthony J. P. Farris had no trouble with him, whereas with Sharp he was compelled to make what he calls a judgment play.

Anthony J. P. Farris must be the strangest fisherman on the gulf coast. In any event here we see stark contrast between his ability to nail a little guy hard, and his inability to do much about a man who had close connections to his boss.

So far Mr. Farris has nailed a chicken thief with the maximum sentence. He has gotten the maximum sentence for a small cog in the big Bank of Sark paper kiting scheme. But the biggest shark in the Gulf of Mexico, the biggest sharpie of his day and time, Mr. Anthony J. P. Farris, freed from the hook. I guess it goes to show you that Sharp had connections, and these other fellows did not.

THE CBS CASE

The SPEAKER pro tempore. Under previous order of the House, the gentleman from West Virginia (Mr. STAGGERS) is recognized for 15 minutes.

Mr. STAGGERS. Mr. Speaker, no Member of the House regrets more than I do that the situation relative to CBS would have to come before the House. I will probably make this statement tomorrow again, but I say tonight that Dr. Stanton has been a friend of mine for some 20 years. I have known him closely in the last few years and consider him more than just a friend. So it is not a matter of personalities.

I have watched CBS almost from its beginning until now when it has grown to a great and awesome power in this Nation. It has done much good for the Nation. I have not always agreed with many of its programs, as I have not always agreed with those of the other two networks. I think they have created a lot of violence, sensuality, and immorality that do not need to be brought into the homes of America.

But that is not the point in question here tonight. I would remind those who have spoken that if they had sent out a questionnaire I believe they would have found their constituents 4-, 5-, 6-, 7-, 8-1 in favor of the stand that the committee has taken.

Of course, they have heard only one side and have cautioned many Members of this House not to make a decision until this came before the House and until they heard all the facts. They have not yet heard both sides, and they have not had a chance to make up their minds.

I had a call before it even came up to a vote in our committee, from a man whom I respect and who is a very close friend of mine. He said he and some others had gone on record as being against the citation. I said, "Have you heard all the facts?" He said, "No." I said, "That sounds like a story I heard and actually experienced one time." Then I told him that I had gone to one of my counties to campaign, which was a very strong Republican county. I went to the store and started talking to some of the people and asked them if they could perhaps vote for me. They said, "No." I asked them, "Do you know the person running against me?" They said, "No." I said, "Do you know his background? Do you know he is not really from the State of West Virginia?" They said, "It does not make a bit of difference about him. He is a Republican, and we will vote for him."

I do not say this as a one-sided thing. We have Democrats who do the same thing. But I asked them, why they would not at least study the issues and give me a chance to represent them if they thought I was capable of doing so.

Well, that sounded to me like this instance. We have not listened to both sides. I think tomorrow is the time to try to get it all out. The thing is this. They have talked about the facts and making decisions. That is what we have the Supreme Court for in this United States of ours. We talk about truth. Let me say to the Members that truth is eternal. All good that has ever been built in the world and civilization has been built on truth and integrity and honesty and kindness and love. Nothing else has mattered anywhere under this sun. Those things which have not been built on such a foundation have vanished. Certainly we want to try to establish the truth.

I try to represent my people to the best of my ability. I intend to do it while I am here. I hope to do it on what I consider the truth. I do not intend to impugn the motives of any man in this Congress. I am sure they all intend to do the very same thing. We may look at objects in a very different way, but I am sure we are all here for the same purpose, to do the very best job we can, not only for our district, but also for all the people of this land.

Mr. Speaker, I have here in my hand 12 letters from all across America. I selected only 12 from the hundreds that came in supporting our position. I include them at this point in the RECORD:

TRENTON STATE COLLEGE,
HISTORY DEPARTMENT,
Trenton, N.J., July 4, 1971.

DEAR MR. STAGGERS: Congratulations on the contempt charge against Dr. Stanton of CBS. Please expedite and encourage a full House vote on the matter. If the *NY Times* can urge "the right to know" then surely the people's representatives can request the same from Mr. Stanton.

I fear arrogant media men more than I do elected representatives.

Sincerely,

JOSEPH V. ELLIS,
Assistant Professor.

PAULIST FATHERS,
Washington, D.C., June 29, 1971.

Rep. HARLEY STAGGERS,
Washington, D.C.

DEAR SIR: Having gained a love for West Virginia during my two years at West Virginia University I also came to share in the deep respect West Virginians show toward you. Though I may have slightly different views on the VietNam war than you, I admire and praise you as a man of the people and a devoted worker.

Specifically I wish to reiterate in writing what I conveyed over the telephone last week. I personally would like to thank you for upholding the people's right to a free, objective and unbiased press. Your resolve

to hold CBS in contempt of Congress, though painful and controversial, is also a decision to hold CBS in contempt of the people.

I, as you, know that it is necessary to avoid any infringement on the latitude of the press. We owe a very great deal of our freedom to the devotion and good work of the press. But even truth must be checked to be sure it is true and freedom guarded to be sure we are still free. Through your courage and foresight I believe you are making legitimate and needed checks to remind us all that our freedom and truths are very delicate.

Again, thank you, and if there is anything I can do please let me know.

Sincerely,

MARK HETTEL, C.S.P.

ATHENS, GREECE, *June, 29, 1971.*

Hon. HARLEY O. STAGGERS,
U.S. House of Representatives,
Washington, D.C.

SIR: Your Committee, in my opinion as an American citizen working abroad, was perfectly justified to cite Dr. Frank Stanton in contempt of Congress.

So as to influence American servicemen with their own self-righteous brand of "fundamental principles", the men of CBS manage to get on Armed Forces Radio Service too, and so we are privileged over here to be witnesses to their "fair and unbiased" reporting of the news. Like a few mornings ago, when Gen. Maxwell Taylor was interviewed by CBS about the "Vietnam Documents" in such a way as to make him, in the light of the sly and subtly-voiced CBS questioner, sound like a numb-brained, arrogant, fascist. I haven't seen "The Selling of the Pentagon", but I'm sure that's what that was all about too, and this is not the selling of anything to the American public but of glamorized irresponsibility.

The enclosed letter from "The Daily Telegraph" of June 23rd, written by an English M.P., Mr. Evelyn King, contains several passages that should be very useful to your Committee in its difficult search for the truth:

"A single news programme—with power of selection and emphasis—a single news presenter able to place the gloss where he chooses—all this beamed day after day to an audience of millions, represents an apparatus of uncontrolled and irresponsible power with which neither writer nor elected person can compete.

". . . All this at the behest of a gaggle of persons elected by nobody . . . . . They have not mirrored and they have created the current social atmosphere."

As I cabled to Attorney General Mitchell ten days ago, with reference to the N.Y. Times Vietnam documents: ". . . I want a Government not a public referendum engineered by sly reporting biased journalism and distorted editing . . . ." Yes! We are all for liberty of the Press and the Airways, but at the price of this hypocritical abuse by people like Stanton, who prove themselves to be more charlatans than we even originally suspected.

Very respectfully yours,

NICHOLAS C. CUMMINS.

THE UNIVERSITY OF GEORGIA,
Athens, Ga., July 6, 1971.

Hon. HARLEY STAGGERS,
The House of Representatives,
Washington, D.C.

DEAR HONORABLE STAGGERS: If a New York newspaper editor is permitted to publish stolen government documents classified as a secret and confidential, then surely Congress should not be denied access to records of a rigged T.V. program. It is inconceivable that an editor has greater rights of classification and declassification than Congress or even the President of the United States.

In my opinion Frank Stanton and CBS are in contempt of Congress for not honoring the request of your committee.

Sincerely,

R. T. OSBORNE,
Director.

HARLAN G. OAKES & ASSOCIATES, INC.
Woodland Hills, Calif., April 29, 1971.

Congressman HARLEY O. STAGGERS,
Washington, D.C.

DEAR CONGRESSMAN: CBS is giving you and your committee, a defensive argument that is not in line with their "demand that News media be free from censorship." If they believed that this argument was valid they would be more than willing to provide your committee with all of the information, so that we the public would be privileged to all of the circumstances surrounding this so-called "documentary." Are we and Congress not entitled to the "full story" in line with the fairness doctrine? If this be so and the fairness doctrine is to be imposed as the news media wants it imposed, then why not the full details on where the sources are, the people who supplied them and the ones who got paid by CBS for so doing?

As a Northwestern student at one time I saw this same CBS run the "Pot Party" at N.U. which was set up by CBS and fully arranged before hand. They are the same people who showed as documented truth the so-called "starving baby" in Texas when in truth it was a pre-mature baby as shown later, in a doctored CBS film.

As a member of the Broadcasting fraternity since I was 20 yrs of age, I am conversant with a lot of "demands" made in the name of free press and speech, and I would suggest that the Congress of the U.S. is not amiss in its demands that the "full story" be revealed when the public money is involved in the subject material used.

I am sending a copy of this letter to BROADCASTING AND TO TELEVISION-Radio Age, to see whether or not they will print it in "letters to the editor."

I believe the military has enough troubles these days without a "doctored" documentary being used against them.

Respectfully,

HARLAN G. OAKES.

Huntsville, Ala., April 27, 1971.

Rep. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE STAGGERS: The attention you are giving to the CBS broadcast on the Pentagon's PR program is indeed reassuring. It is hoped that in taking this look at one specific situation in the television arena that you will be led to examine the full significance of the whole process involved with TV news and bring it within suitable bounds.

Your problems seem as perplexing and intractible as the problems of others trying to reorder things in the field of copyright: They are faced with the innovation of the Xerox machine and you have to deal with "electronic reporting".

Whenever such new technology is brought into use, it injects altogether new and different considerations. These can exert influences that are overriding and dominant over previous concepts. It takes equally innovative thinking with possibly an entirely new approach, new interpretations and new conclusions to devise proper management in view of the new technology.

There are differences between the print Press and this electronic reporting that have a profound influence on the relative status of the two media, and it is fortunate that the control of licensing was established over broadcasting at the outset.

The most noteworthy difference seems to be the capability for "instant reporting" on the part of TV news. It was TV news that allowed millions to be witnesses to the murder of Oswald. The all but forgotten "Extra!" edition of the newspaper was no competition for this showing of events on TV screens in real time, and has been forgotten by the general public, most certainly.

The printed word, no matter how skillfully handled is, on the face of it, the view of another person and in terms of his own expression. At best, it is "excellent reporting." At worst, it is "just a lot of newspaper talk". But the essential factor is the reader's freedom to judge. In any event, it is the journalist who is there, not you.

With his video sound, the TV journalist says, "You are there." As the television news managers would have you believe, the medium but serves as the conduit of some utility, connecting the viewer with reality.

Nothing could be farther from the truth.

The pervasive anti-intellectualism of the medium defies direct analysis. You are *not* there. The reporter who is there does not always tell what is there, nor always turn his camera to show objective reality. And what does go out on the air waves is not what the reporter has recorded, but a selection of recordings made by editorial staffs best calculated to serve their purposes.

Editorial staffs give their reporters all sorts of orientation and guidelines before they send them out to cover events. They do not air these instructions with the public. But the attitude toward certain kinds of events, the mood of reporting on certain public and political figures, the simple factor of time allocation within daily programming shows through with critical analysis. Yet by these devices and many others, the editorial staffs of the television news organizations are able to deal directly in the public's appraisal of affairs, and the individual viewer never knows this.

Such biasing of news reporting occurs in the print Press too, but the difference is that there is meaningful competition of sorts among newspapers. Also, no single newspaper reaches the entire Nation, as does the smallest of the TV networks. And the newspapers at least make a show of separating opinion from fact by the devices of the editorial page and the use of columnists in distinction from what is printed as news.

Nothing else approaches the extent, pervasiveness throughout our social fabric and subtlety of television news, provided as "instant journalism" that has instant effect, by the one preeminent and the two competing networks. All of this talk currently popular with political aspirants about protection against Big Brother's investigative agencies is childish nonsense by comparison with the potential for enslavement of the mind of the general public possessed by major network news staffs. Despite the fact that I, as well as others, have a profound desire and hope to be able to view the network news organizations as Caesar's wife, very frankly, when I see the patterns that are emerging, I am becoming terrified by the amoral, apatriotic, anti-intellectual and, in some respects, anti-American power that they wield.

The public interest—and the very legitimate interests of the broadcasting industry as well—need safeguards for the right to a free access to reality in the news and protection against the accidents of thoughtlessness and misjudgment, the whim of personal bias or the malice of some person or clique possessed by some unannounced, blandly concealed motivation.

Enclosed is some further documentation of my views on this matter which I hope offers something worthwhile in support of your present efforts to keep TV news free from unenlightened enslavement by those who exercise its awesome power.

Sincerely,

PRENTISS B. REED,
Lt. Col. USA (ret.).

WALSH & WALSH, LAWYERS,
Concordia, Kans., July 2, 1971.

Re: C.B.S. Contempt of Congress.
Rep. HARLEY STAGGERS,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE STAGGERS: When biased and false news reporting is on television the result is that millions of people are misinformed. Nobody has the right to publish false or biased news, whether the same be done by individuals, newspapers or television networks. To attempt to remedy such reporting, is not a form of censorship, and in my opinion, does not violate the right of the free press. If C.B.S. News is guilty of false and biased reporting in connection with the program, "Selling of the Pentagon", then the people have a right to know and the people have a right to expect Congress to endeavor to prevent the same.

All rights have limitations and considering the powers of television to persuade, it is time that Congress defined the limitations on the right of the free press.

The people who control the television news cameras can almost dictate what the majority of the people in this country think and believe. With a little imagination, we could have a press dictatorship. Newsmen like to say "the people have a right to know". But I agree with you in that the people have a right to know the truth. Keep up your good work.

Sincerely yours,

WILLIAM J. WALSH.

BLESSED SACRAMENT CHURCH,
San Antonio, Tex., July 5, 1971.

Hon. HARLEY O. STAGGERS,
Washington, D.C.

DEAR SIR: May God bless you! By all means stick by your guns! The establishment of the communications media think they are sacrosanct and not answerable to anyone for anything. Regardless of how delicate a matter might be, how it affects our image or our national security, they are not concerned. . . . They hide behind their axiom, "The right of the people to know." You and your associates represent us, the people. By their own dictum we have the right to know. And we want to know the background of "The Selling of the Pentagon."

Sincerely yours in Christ,

RALPH J. SMITH,
Pastor.

SAN DIEGO, CALIF., JUNE 25, 1971.

Hon. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE STAGGERS: We applaud your courageous stand against the deception used in the "Selling of the Pentagon."

When the communications media have the arrogance to take statements out of context, to splice films, and to pervert intentions, it is time to expose the type of news that we are being subjected to by two of the three major networks.

What we need is "freedom of the viewer" (or listener or reader) to receive *honest* and *truthful* news coverage!

Very truly yours,

W. T. MCKINNEY,
A. MCKINNEY.

SAN ANTONIO, TEX.,
June 10, 1971.

Hon. HARLEY O. STAGGERS,
Washington, D.C.

DEAR CHAIRMAN STAGGERS: After reading your thorough investigation of Project Nassau ones confidence is badly shaken in the network involved.

It is too bad the Committee did not reveal the facts nation-wide so our people could be the judge. I believe V.P. Agnews recent reference was the first word to reach these parts.

Now the arrogance and dishonesty repeated by the same network in The Selling of the Pentagon should shatter the publics confidence beyond redemption.

Our people will not accept this dishonesty, in support of a motive, regardless of how noble it may be.

The peoples trust is violated continually by the networks through their so-called documentaries, staging and the function of selectivity. These violations are reflected in the present and past by "Say Goodbye," Hunger in America, Orson Wells' Scare, Quiz shows, Case History of a Rumor, etc.

The networks attack our federal institutions, particularly the FBI, Justice Department and military by overloading with adverse evidence through selectivity and failing to give the same opportunities to rebuttal guests and news items. This is so well documented by ABCs Howard K. Smiths Efron Interview titled, "There is a Network News bias." It reveals the liberal orientation of the personnel and especially attacks the bias toward the military in Vietnam.

Your investigation concludes rightly, that there should not be one law for the people at large and another for the members of the news media. The First Amendment was not intended as a shield for dishonesty, not even in the news media.

The public should be most grateful for your dedicated attempt to protect its interest regardless of the cries from any source.

Your comments will be appreciated.

God bless you and may no one stay your hand.

Respectfully.

GEORGE B. PEPLOE,
Major General, USA–Ret.

ST. LOUIS, MO., *April 13, 1971.*

Hon. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN STAGGERS: I read in the paper that your Subcommittee is going to investigate CBS in relation to its recent program, "The Selling of the Pentagon."

I watched the program when it was rebroadcast in March. I expected the program to be much as it was, and therefore, was not terribly upset by its biased and critical approach. I listened carefully to the criticisms voiced by Vice President Agnew, Secretary Laird and Congressman Hébert. At that point I felt that perhaps these gentlemen were too sensitive and had overreacted to CBS's approach. However, after I heard the defense of CBS by Richard Salant I realized that all the criticism had been justified. In other words, I believe that Mr. Salant's defense proved the truthfulness of the very allegations made.

Let me explain.

Vice President Agnew and Secretary Laird accused CBS of splicing the film of a speech by a Colonel so as to create the impression that the Colonel was stating as his opinion a certain philosophy, whereas the Colonel was in fact quoting one of the Cambodian Princes. Mr. Salant did not deny the charge. Instead he stated that the Colonel had not quoted the Prince correctly. If this is so, should not CBS have pointed that out during the program? I think the fact that Mr. Salant raises a "straw man" issue, and avoids answering the charge made, lends great credence to the charge.

Mr. Salant, in his defense, resorted to the same type of half-truths as CBS was accused of using in the program. He implied that if the Colonel did not quote the Cambodian Prince in full, then CBS was free to distort the Colonel's words. Whether or not the Colonel correctly quoted someone is quite immaterial to the underlying question of whether CBS correctly and thoroughly and truthfully quoted the Colonel.

Secondly, Congressman Hébert accused CBS of securing a film clip from his office under false pretenses. Mr. Salant flashed a letter from one of Mr. Hébert's aides on the television screen and highlighted the first and last paragraphs of the letter. The first paragraph stated that the film clip was being sent under separate cover. The last paragraph offered continued cooperation. Now, what was in the middle paragraphs? Perhaps nothing of significance. Perhaps a statement expressing the understanding of Mr. Hébert's office regarding use of the film.

Also, with reference to Mr. Hébert's charge I know from personal professional experience that many times a person will write to another and make a request. The person receiving the request will respond and make reference in his response to the request. Sometimes, the response does not make reference to the original request. But in either case, both the request and the response constitute the "terms of the transaction" and either one by itself can, and often does, create a distorted view of the transaction. Mr. Salant's reference only to the response, and not to the original request, did create the distorted view he desired.

Quite frankly, I am appalled that someone with Mr. Salant's apparent lack of basic honesty and truthfulness is in charge of the news reporting of a major network. It is frightening to think of the ramifications of such a situation. I urge you to look into this matter most thoroughly and in the hope that my comments may be of some help, I offer them to you.

Sincerely yours,

GERALD J. ZAFFT.

In addition to these 12 letters, I ask unanimous consent to include in the RECORD an article which appeared in today's Star, written by William F. Buckley, Jr.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The article is as follows:

THE SHOWDOWN BETWEEN CBS AND CONGRESS

(By William F. Buckley, Jr.)

Here is the background. CBS produced a brilliantly effective documentary called "The Selling of the Pentagon." Its thesis was that the Pentagon does a lot of public relations work, which I found about as surprising as Vice President Spiro T. Agnew's revelation that the networks tend to show a leftward bias.

The issue was then raised, and intelligently discussed, whether the documentary had engaged in rather unusual distortions.

Any polemical account of anything engages in what one might call distortions, i.e., the stressing of one set of points, and the understressing of another. But it was charged that CBS did more: That the producer took words uttered by a Pentagon official in answer to one set of questions, and appended them to a different set of questions, so as to give the viewer the impression that said Pentagon official was being very perverse and very unresponsive.

At this point a congressional committee began to take an interest in the case, and notified CBS President Dr. Frank Stanton that it desired to see all the film that had been taken, from which the final had been put together. To this indelicacy, Stanton replied: No, citing the freedom of the press. And, indeed, no journalist gladly permits others to see his notes, no artist his early drafts.

But Rep. Harley Staggers of the House Commerce Committee turned out to be a tough hombre, and he promptly subpoenaed the CBS rushes. Stanton refused to produce them, whereupon the subcommittee voted to find him in contempt. Now the senior committee, by a two-to-one vote, concurs, and the House of Representatives will be asked to say yes or no.

Stanton, who is the soul of honor, insists

on reducing the conflict to generic terms. "All this boils down to," he said, "is one central and vital question: Is this country going to continue to have a free press, or is indirect censorship to be imposed upon it? The issue is as simple as that."

But surely the issue is not as simple as that. It is more complicated than that. Staggers, who by the way is a Democrat, put it this way, in answering Stanton: "This is the most powerful media we have in America today and 'you' talk about 'chilling effect' . . . Where there is untruth put over these networks, they can control this land, and you know they can." Rep. Clarence J. Brown came to the defense of CBS, if not exactly in just the way Stanton would have liked.

"CBS has a right to lie," said Brown, "and does so frequently."

But then Brown suggested that CBS should devise its own safeguards against a repetition of such distortions as the Pentagon commentary was guilty of.

"It is not up to me to decide what's untruthful, biased and slanted, but if Frank Stanton doesn't wake up to the fact that he has a responsibility to the American people, the people will take care of him—or we will take care of him some other way."

Surely Congress is making its own simple point, which is that broadcast licensees, unlike newspaper publishers, are already regulated as it stands, via such articles as the Fairness Doctrine, and that Congress has a continuing responsibility to oversee the broad rules by which the broadcasters are governed.

As recently as 1959, when the Communications Act was amended, Congress, in granting certain immunities to the television industry, wrote that "nothing in the foregoing . . . shall be construed as relieving broadcasters in connection with the presentation of . . . news, documentaries . . . from the obligation imposed upon them under this act, to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

Meanwhile, deep down in the news story, one learns that CBS has just now issued a directive governing future news documentaries. "One (directive)"—to quote a summary of it, "requires that, if the answer to one question asked of an interviewed person is taken from a reply to another question, the viewer must be so advised."

Those who know Frank Stanton will know that his reforms were instituted because of his own commitment to fairness. But those who don't know Frank Stanton will quite understandably believe that his reforms were instituted because of congressional pressure. And that, children, is what congressional pressure is all about.

Mr. STAGGERS. Mr. Speaker, we have hundreds and hundreds of letters supporting this cause, and I would say many, many newspaper editorials supporting our cause, from across America. I am not going to burden the RECORD with them. Certainly anyone who wishes to can view them at our subcommittee office. They have just now begun to come in in overwhelming numbers in support, as people know what is going on and what has been proposed before the Congress of the United States.

At this time I do not believe there is any use in further debating the issue, because it will be debated tomorrow, the good Lord willing, and everything falling into place, so that we can. Then the Members of the House will know what decision they should make, after they have heard both sides.

Mr. BURTON. Mr. Speaker, the CBS controversy is a highly complicated issue with far-reaching constitutional ramifications regarding the powers of Congress and freedom of the press in America.

The vote on this matter will be one of the most important we will cast this Congress.

I therefore wish to recommend to my colleagues a fact sheet on the issue prepared by the staff of the democratic study group of which I currently am chairman. As with all DSG fact sheets, it is designed to inform Members on the issue—not argue in favor of one side or the other.

I might add, Mr. Speaker, that I am personally opposed to the citation and intend to vote against it. However, regardless of how other Members may feel on the subject, I think they will find the DSG fact sheet gives a fair and balanced presentation of this crucial issue and I am pleased to make it available.

Mr. Speaker, I hereby include DSG fact sheet 92–9, dated July 9, 1971:

THE CBS CONTEMPT CITATION

This DSG Fact Sheet deals with the House Commerce Committee resolution citing the Columbia Broadcasting System and its President, Dr. Frank Stanton, for contempt of Congress for refusing to turn over film materials and other information regarding preparation of the CBS documentary, "The Selling of the Pentagon."

Because of the far-reaching Constitutional issues involved, the CBS citation is one of the most important and controversial contempt issues ever considered by Congress.

The matter is expected to be brought before the House for a vote sometime during the week of July 12—despite the fact that the committee report will not be available until Tuesday, July 13. Objection may be made that consideration of the resolution before the report has been available three days violates House rules. Chairman Staggers contends that the three-day rule does not apply to questions of privilege such as contempt citations.

This fact sheet contains the following sections:

SECTION I. BACKGROUND

On February 23, the CBS Television Network broadcast a news documentary entitled "The Selling of the Pentagon" which described the public relations activities of the Department of Defense. The broadcast produced a storm of controversy over both its content and allegations that CBS altered film interviews to mislead and deceive the public. On March 23, the program was rebroadcast with a 22-minute postscript containing critical comments of Vice President Agnew, Secretary of Defense Laird, and Chairman Hebert of the House Armed Services Committee, and a response by Richard S. Salent, President of CBS News.

In response to the extensive criticism and debate over the original broadcast, CBS broadcast an hour-long panel discussion on April 18 presenting opposing views on the Defense Department's public information program.

As a result of charges of deceptive editing practices in "The Selling of the Pentagon", the Special Investigations Subcommittee of the House Foreign and Interstate Commerce Committee began an inquiry into the need for further legislative oversight of broadcast procedures and issued a subpena to CBS demanding "all film, workprints, outtakes, sound-tape recordings, written scripts and/or transcripts" relating to the documentary. On April 20, CBS provided film copies and written transcripts of the material actually broadcast, but declined to provide materials not broadcast. CBS contended that the demand for such materials violated its First Amendment protection from government censorship.

On May 26, the Committee withdrew its earlier subpena and issued a revised one requiring CBS President Frank Stanton to appear and testify before the Investigations Subcommittee and to produce all materials which appeared, at least in part, in the actual broadcast.

On June 24, Dr. Stanton appeared before the subcommittee and testified for nearly four hours. He refused, however, to produce outtakes (the unused portions of filmed interviews) and he refused to testify regarding editing practices used in the preparation of any specific CBS news or documentary broadcast on grounds that the revised subpena still violated the constitutional protections of a free press.

Chairman Staggers, who heads the subcommittee as well as the full committee, suggested that Dr. Stanton was in contempt of Congress for refusing to comply with the subpena, and the subcommittee subsequently voted to cite both Stanton and CBS for contempt. Only July 1, the full Commerce Committee voted 25 to 13 to support the subcommittee's contempt citation. (The dissenting minority included 10 Democrats and three Republicans.)

The citation is the first ever sought by either the House or Senate against a segment of the broadcast media or one of its officials, and has produced a deluge of protest from professional associations representing every segment of American journalism. These associations include the American Society of Newspaper Editors, the American Newspaper Publishers Association, the National Newspapers Publishers Association, the American Association of Schools and Departments of Journalism, the American Newspaper Guild, the Associated Press Broadcasters Association, the Association for Education in Journalism, the Association of American Publishers, the Authors League of America, the Radio Television News Directors Association, and Sigma Delta Chi.

Newspapers have been nearly unanimous in opposition to the subpena and contempt citation which carries a maximum penalty of $1,000 fine and a year in jail.

SECTION II. SUMMARY OF BASIC POSITION

This section presents a brief summary of the basic positions of Chairman Staggers and the Committee majority, CBS, and the bipartisan Committee minority. Key points of controversy are dealt with in more detail in Section III.

Committee majority

Chairman Staggers and the Committee majority contend that CBS "altered film and sound . . . to deceive the public" in its documentary "The Selling of the Pentagon," and that it is the right and obligation of the Committee to investigate and recommend legislation to prevent such deception. They argue that the subpoena is proper since the materials are necessary if the Committee is to discover the techniques of broadcast distortion, that CBS' refusal to comply is blocking the Committee's inquiry, and that the network and its president have therefore "contemptuously defied a validly issued and lawful subpoena." The Committee maintains that the First Amendment freedoms do not apply as completely to broadcast media as to newspapers and other print media.

According to Chairman Staggers, "Deception in broadcast news is like a cancer in today's society." He feels the Committee has a responsibility to investigate such "deliberate attempts to deceive" the public and that CBS' refusal is a "calculated affront" to the Committee's investigatory powers and its duty to legislate.

The Committee contends that the great power of broadcasters to shape public opinion requires government supervision to prevent manipulation of the decision-making process

of the electorate and to protect the people's right to know. The question has nothing to do with editorial judgements, according to the Committee, but it is focused on the techniques of cut and paste used for the purposes of intentional deception.

The Chairman and the committee majority contend also that CBS deprived those whose words they altered of their First Amendment right of free speech and cut off the public's right to hear freely expressed views, and that such "calculated deception" is beyond the protection of the First Amendment. The Committee majority also maintains that since the broadcasters operate only by Congressionally-granted privilege, they do not fall within the freedom of the press granted the printed media and that in the absence of a need to protect confidential sources there is no newsman's privilege to resist subpoena.

CBS

CBS contends that it is justified in refusing to comply fully with the subpoena in order to protect its First Amendment freedom from censorship. It contends that the Subcommittee is making an unwarranted inquiry into the constitutionally-protected area of news judgment and that such activity would have a "chilling effect" on the broadcast media by restraining the presentation of controversial programming and by deterring broadcast journalism from investigation of governmental activities on which such programming depends.

The network argues that radio and television stand on equal footing with newspapers under the First Amendment's freedom of the press guarantees, and that the subpoena impinges on these guarantees by asserting a governmental right to inject its own standard of "truth" in evaluating the editorial decisions of broadcast news. The legislative concerns claimed by the Committee—to prevent "distortions" or to control "editing practices"—are beyond legitimate Congressional regulation of broadcasting, CBS contends. While the limited frequencies available for broadcasting may justify regulatory procedures to maximize efficient use and to prevent the monopolization of the airwaves, CBS argues, such regulation must stop short of overseeing news programs or second-guessing news and editing judgments.

CBS says the requested film outtakes are similar to a newspaper reporter's notes and like such notes are protected by the First Amendment.

Committee minority

The bipartisan minority argues that the subpoena is both unnecessary and an overextension of Congressional powers since the Committee already has the needed information, that the First Amendment prohibits inquiry into the news judgments of broadcasters, and that the case against CBS is so weak that it could backfire in the courts leaving Congress with severely-curtailed powers to react to legitimate areas of public concern dealing with broadcasting.

They point out that the information needed in order to legislate has been provided by CBS or is available to the Committee from other sources, such as the Pentagon and individuals interviewed for the CBS program. Full transcripts of the controversial portions cited by those seeking contempt have been inserted in the *Congressional Record*. According to the minority, the courts have been extremely reluctant to infringe First Amendment protections when the sought-after information is available from other sources.

The bipartisan minority contends that there are several recent Supreme Court and Federal Court of Appeals cases which apply First Amendment freedoms equally to broadcast and printed news and that Congress should act with "prudent restraint" when dealing in this area. They argue that the proper way to temper distortion is not through an extension of Congressional controls to the method by which news is obtained and reported, but through the free exchange of ideas in a free press, as was intended by the framers of the Constitution.

The minority feels that if the citation is upheld by the House, Congress will go to court with a weak case, will undoubtedly lose, and will face the possibility of diminished prerogatives and crippled powers of oversight of broadcasting because of the failure to raise the real interest of Congress in a strong way.

SECTION III.—KEY POINTS OF CONTROVERSY

This section deals with the key issues in dispute and summarizes the opposing points of view of Chairman Staggers and the Committee majority, of the bipartisan minority, and CBS.

The subpoena was a valid exercise of the committee's powers and responsibilities

The Committee contends that the Rules of the House give it responsibility for legislation regulating interstate and foreign communications and that legislative responsibility includes a broad power of investigation. The essential elements of this investigatory power are that it be exercised for (a) valid legislative purpose and (b) that questions asked or evidence sought must be relevant.

Here the "valid legislative purpose" lies with Congress' traditional power to control the channels of interstate and foreign broadcasting and to regulate their use in the public interest, the Committee contends.

The outtakes here are relevant, the Committee maintains, in order for the Committee to ascertain if, and how, the words of interviews were rearranged and events in the documentary were changed in sequence.

Since the two requirements for valid Congressional investigation are present, the subpoena itself is valid.

CBS and its supporters argue that the subpoena fails both Committee tests. They contend that there is no valid legislative purpose since the Committee's purposes collide with the overriding protections of the First Amendment and that the materials sought are not relevant since the information is available from other sources.

They contend that the underlying assumption of the Committee's investigation is that Congress has the power to judge whether TV news is factually "true" and that this purpose is too broad in light of the First Amendment's protections of the press and that such interference with protected rights cannot be a legitimate legislative purpose.

The subpoenaed information is needed by Congress

The committee contends that the outtakes are needed in order for the committee to thoroughly understand the techniques used in the alleged distortions. Although the committee has in its possession evidence which establishes the fact of the deception, they contend, without the actual outtakes it is unclear how this was accomplished in a manner to defy detection by viewers. Until these techniques are understood, appropriate legislative response will be stymied.

CBS and the committee minority argue that the subcommittee has everything it needs to draw its conclusions about the propriety of the editing process. Full transcripts of the only controversial portions cited by the committee have been inserted in the *Congressional Record* by Reps. Hebert (March 8, 1971, pp. 5401–5402) and Adams (July 8, 1971, page 24203). The documentary was made up of old Defense Department films (readily available from the Pentagon) and clearly defined interviews which can be checked for accuracy by the testimony of those interviewed. Additionally, CBS supplied a full transcript of the documentary, a copy of the film, a statement of general principles applicable to its editors in the past and specific guidelines intended for future use. Dr. Stanton also testified for several hours in front of the Investigations Subcommittee.

The first amendment applies as equally to radio and television as to newspapers

CBS and its supporters argue that the First Amendment protections extend to all news media and that it is irrelevant whether news is presented via newspapers, radio or TV. They maintain that the Supreme Court (most recently on June 7 in its *Rosenbloom v. Metromedia* decision) and lower courts have consistently treated broadcast journalism as having the same First Amendment rights as newspapers. Some extra regulation of broadcasting may be necessary to assure the fair use of the airways, but this regulation does not extend to government oversight of news and editorial judgments. Such past regulation has been to make sure that all sides were presented, not to investigate the truth or falsity, according to government standards, of any one presentation.

The committee majority argues that public ownership of the airwaves requires that they be used in the public interest. Thus, broadcasters have special responsibilities as fiduciaries for the public for accuracy in their news broadcasts and that unlike newspapers their freedom hinges on the accurate and fair use of their privilege.

Since the government controls access to the airwaves, the government has a responsibility to prevent deception and guard against distortions of fact in their use.

Broadcast deception warrants limitation of first amendment protections

The committee argues that the far-reaching consequences of deception in TV news can lead to a misinformed electorate and constitutes a clear and present danger to the public. The high reliance on the broadcast industry by the electorate requires disclosure of manipulation in order to protect the electorate's right to make political decisions on a basis of truth. Further, the Committee contends, the Supreme Court has ruled that calculated falsehood is not protected by the First Amendment.

CBS contends that the basic theory of the First Amendment is that in the free and open marketplace of ideas, the truth will prevail. The bipartisan minority agrees that "whatever standards it chooses to impose on broadcasting, the Congress cannot extend its controls to the method by which news is obtained and reported. Nor can it set out on a search of effective remedies that are within the spirit of that principle in the case of CBS and Dr. Stanton.

"Any Congressional initiative which springs from the premise that government has the power to guarantee the 'responsible' use of journalistic judgment springs from a false premise. Government is powerless either to render journalism 'responsible' or to restore public confidence in it. Only the journalists have that power . . . the threat of public disbelief and contempt should hang far heavier over the media and its sponsors than any Congressional subpoena."

The contempt citation would have a "chilling effect" on broadcast journalism

CBS and its supporters argue that if the subpoena is upheld broadcast journalists will be inhibited by their reporting because of fear that they might be subject to Congressional interrogation and official inquiry into their news judgments. This chilling effect would slow the free flow of news, especially that relating to government activities.

Even Attorney General Mitchell recognized this effect, supporters point out, when he said recently that unwise use of subpoenas "may seriously affect the vigor of our press institutions and their relationships with the federal government, the bar and the courts."

In *Rosenbloom* v. *Metromedia, Inc.* (June 7,

1971), CBS contends, the Supreme Court made clear that the First Amendment protects the press, including the broadcast media, against actions likely to result in a chilling effect upon the exercise of their First Amendment rights.

The committee contends that there can be no chilling effect on the media since the subpoena is limited to a specific program and presents no continuing burden for the broadcast media. Without this continuing burden, they argue, a claim of a chilling effect is illusory. The Committee also points out that the subpoena has nothing to do with newsgathering procedures, merely the editing techniques, so there is no valid reason for the inhibition of reporters.

According to the Committee, the Supreme Court, in *Red Lion Broadcasting Company v. F.C.C.*, rejected a parallel argument directed at the F.C.C.'s fairness doctrine on the grounds that should present licensees grow timid, the F.C.C. can require them to give adequate attention to public issues.

Broadcast outtakes are equivalent to reporters notes

CBS and its supporters contend that the outtakes and sound recordings used in the production of TV news programs are equivalent to the reporter's notes protected by the First Amendment from government scrutiny—material compiled in an extensive examination of a news subject and deleted from the final product in order to arrive at a concise, comprehensive story. In both cases the original gathering of material is based on a news judgment—a choice as to which pictures to take, what questions to ask, or what notes to take—and the final editing is based on a second news judgment. These news judgments are similar and lie within the Constitutionally-protected area of the First Amendment.

CBS supporters point out that President Nixon and White House Communications Director Herbert Klein have equated reporters notes with the materials sought by the Committee in this case.

The committee argues that the images and sounds of the outtake materials are records of actual events and not the same as the thoughts and impressions of a reporter committed to a notebook. The specific outtakes here consist of films of a public speech and an interview. It is inconceivable, the Committee contends, that such public speech could become CBS' privileged property. Further, the Committee argues, there is no judicially-declared First Amendment newsmen's privilege except to protect confidential news sources. Since CBS does not here claim to be protecting such sources, they have no privilege to resist the subpoena.

GENERAL LEAVE TO EXTEND

Mr. ADAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to extend their remarks on the subject of the citation of CBS and include extraneous matter.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

LEGISLATION CONCERNING THE STRIKING OF MEDALS HONORING CERTAIN FEDERAL OFFICIALS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HALPERN) is recognized for 5 minutes.

Mr. HALPERN. Mr. Speaker, I would like to declare my support for legislation to provide express statutory authorization for the practice of striking medals commemorative of the Presidents of the United States, the Secretaries of the Treasury, and the Directors of the Mint, and to provide for the initiation of this practice with respect to the Treasurers of the United States.

There is much to be said for the issuance of all such medals. They are exceedingly popular, serve to educate the public, advertise American traditions, and their sale redounds to the financial advantage of the Government.

The present statute concerning the striking of commemorative medals—section 368, title 31, United States Code—section 3551 of the Revised Statutes—is in its terms directory merely. The proposec. amendment makes mandatory the inclusion in the regulations of the Director of the Mint, provision for the coin ing of medals commemorating persons holding the offices named in the amendment.

That is to say, under present law the Director of the Mint has discretion about issuing or not issuing regulations concerning coinage of commemorative medals for the persons holding or who have held the Federal offices named in the amendment. The amendment is intended to limit this discretion as to those offices.

As to all the subjects of commemorative medals other than those specified in the proposed amendment, discretion on the part of the Director of the Mint is transferred to the Secretary of the Treasury.

The bill reads as follows:

H.R. 9705

A bill to provide express legislative authorization for the practice of striking medals commemorative of the Presidents of the United States, the Secretaries of the Treasury, and the Directors of the Mint, and to provide for the initiation of this practice with respect to the Treasurers of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 3551 of the Revised Statutes (31 U.S.C. 368) is amended by inserting immediately after the first sentence thereof the following: "The regulations shall provide for the striking of medals commemorative of the Presidents of the United States, the Secretaries of the Treasury, the Directors of the Mint, and the Treasurers of the United States, and shall provide for the striking of such other medals as the Secretary of the Treasury may deem appropriate."

AID TO PAKISTAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts, (Mr. MORSE) is recognized for 5 minutes.

Mr. MORSE. Mr. Speaker, on July 1 I introduced House Joint Resolution 765 which affirms that "all military assistance, and all sales and deliveries of military equipment and weapons" to Pakistan and "all licenses for military sales including those already approved" shall be suspended for a period of 365 days unless the President determines that such assistance, sales or deliveries are required for reasons of overriding national interest and so reports to the Congress.

The response to this resolution has been highly favorable. It demonstrates that Members are determined that the United States by its every action convey the conviction that it favors an immediate standdown in the level of violence in East Pakistan and that they believe that the minimal step which the United States must take is to halt the shipment of arms to Pakistan. Forty Members have cosponsored this resolution.

I would point out again that my resolution follows up on a position commendably taken by the administration itself. When civil war broke out in East Pakistan, the Department of State made clear that the U.S. program of military sales to Pakistan had immediately been placed under review and that no further sales would take place pending a clarification of the situation.

Subsequently, however, it was learned that military supplies in the pipeline continued to flow to Pakistan notwithstanding statements by the Department of State that nothing was scheduled for delivery. Although final figures are not available as of this date, Senator CHURCH has information which suggests that the amount in the pipeline may be as high as $35 million—RECORD, 24036, July 8, 1971.

House Joint Resolution 765 will close this loophole. There are precedents for halting deliveries in the pipeline. The United States suspended arms shipments during the 1965 war between India and Pakistan.

House Joint Resolution 765 has another objective. It attempts to deal effectively with the Department of State's contention that many resolutions directed against military aid or sales to Pakistan provide a time frame "so imprecise as to render their application difficult if not impossible." Thus these resolutions often call for an end to shipments until the conflict is "ended" or "resolved."

House Joint Resolution 765 cuts through this problem by simply halting all military assistance, military sales or military deliveries for a period of 365 days from enactment of the resolution. Yet it meets other possible objections from the executive branch. At the same time that it clearly and firmly expresses the sense of Congress on this important issue of military sales and deliveries to Pakistan, it does not irrevocably tie the President's hands. The President may at any time alter U.S. policy provided that he determines that issues of "overriding national interest" are involved and so reports to the Congress.

Another argument sometimes advanced against resolutions dealing with U.S. military deliveries to Pakistan is that a suspension of these could have an adverse impact on our relations with Pakistan or that it could hinder efforts to promote a political settlement. Personally, I question whether the United States retains any significant leverage from its military or economic aid programs when the country to which it is sending the military equipment or eco-

nomic aid is caught fast in the grasp of internal disruption.

But in any event the United States has already imposed an informal halt on further military sales to Pakistan and its economic aid programs continue. In these circumstances I would suggest that without reducing whatever significant leverage we may still enjoy in a country fighting a civil war, House Joint Resolution 765 will close an unintended loophole, will convey a consistent impression of our arms policy which continued deliveries makes impossible, and will ward off totally unnecessary diplomatic complications with interested third countries in South Asia.

I urge the Congress to take immediate action on House Joint Resolution 765. We will regret every day's delay.

A list of cosponsors to House Joint Resolution 765 follows:

Mrs. Abzug, Mr. Anderson of Illinois, Mr. Anderson of Tennessee, Mr. Badillo, Mr. Bell, Mr. Biaggi, Mr. Bingham, Mr. Boland, Mr. Brademas, Mr. Burton, Mr. Corman, Mr. Dellums, Mr. Drinan, Mr. Frenzel, Mr. Gallagher, Mr. Gude, Mr. Halpern, Mr. Harrington.

Mr. Kastenmeier, Mr. Koch, Mr. Leggett, Mrs. Mink, Mr. Mitchell, Mr. Mosher, Mr. Moss, Mr. Nix, Mr. Podell, Mr. Riegle, Mr. Reuss, Mr. Roybal, Mr. Robison of New York, Mr. Roe, Mr. Rosenthal, Mr. Ryan, Mr. Sarbanes, Mr. Scheuer.

Mr. Steiger of Wisconsin, Mr. Stokes, Mr. Vanik, Mr. Waldie, Mr. Wilson of California.

SOVIET NEW TACTICS IN GERMANY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. CRANE) is recognized for 5 minutes.

Mr. CRANE. Mr. Speaker, the recent proposal of the Soviet Union to open a Soviet Consulate General in West Berlin is a new and very disturbing attempt by the Soviets to increase rather than diminish tensions in this part of Europe.

This new move should be viewed within the context of the overall Soviet policies on Germany as expressed primarily by the agreement of August last year signed in Moscow between the Soviets and Willy Brandt's German Government. The agreement bypassed the crucial problem of West Berlin; but in the subsequent statements Chancellor Brandt committed himself to the linkage between a "satisfactory" solution of the West Berlin problem and the treaty. He made this solution a prerequisite for the ratification of the Moscow agreement. The Soviets' new demand for the Consulate General in West Berlin creates a very serious new complication.

The leader of the CDU/CSU opposition party in the Bundestag, Dr. Rainer Barzel, recently stated in reference to this new Soviet proposal:

He who looks for solutions to the Berlin problem without any new complications must consider first that the Soviet Union should not be given any position in West Berlin which the Western Powers are not looking for themselves in East Berlin.

The Soviet Union has been pressing for many years to increase political tension in Germany by insisting on the recognition of three separate German entities: West Germany, East Germany, and West Berlin. With this purpose in mind the 24th CPSU Congress in Moscow of last April was attended by the separate German Communist parties' delegations from all three areas, with the former boss of East Germany, Walter Ulbricht; First Secretary of the Communist Party in West Germany—KPD—Kurt Bachmann; and First Secretary of the Communist Party of West Berlin—SED—A. Danilius, respectively in charge of these three delegations. As far as the Soviet Union is concerned these communist leaders are the real "popular" representatives and spokesmen of the respective parts of Germany.

According to this notion, Kurt Bachmann, not Willi Brandt speaks for the interests of the West German population as far as the Soviet Central Committee is concerned. The next and internationally recognized step of separating West Berlin into a third Germany would be to install a new Soviet Consul General there who would have a status similar to the two other Soviet ambassadors, Abrasimov in East Berlin and Falin in Bonn, reporting directly to the Foreign Minister in Moscow.

The formal acceptance of such an office in West Germany by the Western Powers would provide a first direct step toward real political separation of West Berlin from West Germany notwithstanding other aspects, such as physical access rights, communications, currency, et cetera.

The issue here is much greater than West Berlin alone. According to Dr. Barzel:

In West Berlin the three Western Powers are protecting not only the people of the city and the territory but the democratic system itself.

It is extremely important to maintain the direct political link between West Berlin and West Germany and avoid any new elements severing this linkage. The Soviet consulate general in West Berlin would be a step in the Soviet "salami tactics" increasing the tension in this part of Europe and jeopardizing the position of West Berlin as part of Western Europe.

RESEARCH AND DEVELOPMENT OF LESS POLLUTING SOURCES OF ELECTRIC ENERGY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. FOLEY) is recognized for 10 minutes.

Mr. FOLEY. Mr. Speaker, I commend to the attention of the House an article by the Honorable Charles F. Luce, now chief executive officer of Consolidated Edison of New York and formerly Under Secretary of the Interior. Mr. Luce moots several approaches to financing research and development into less polluting sources of electrical energy.

I shall like to remind my colleagues that on January 28, 1970, Mr. DADDARIO, Mr. UDALL, and Mr. GREEN of Pennsylvania joined me in introducing House Joint Resolution 1071, a joint resolution to establish a Joint Committee on Environmental Quality and Population Policy. One of the functions of the joint committee created under this resolution would have been "to conduct a continuing, comprehensive study of technological change as it relates to environmental quality including research and development efforts into nonpolluting sources of energy." This is especially pertinent in view of the fact that House Joint Resolution 3, establishing a Joint Commission on the Environment, will come to the floor this week.

Mr. Speaker, I include Mr. Luce's article "The Electricity Crisis: Prototype for Business?" which appeared in the June 1971 issue of the Chief Executive. I earnestly hope that any joint committee finally authorized gives the highest priority into examining the adequacy of Federal help for developing nonpolluting sources of energy with special emphasis on such long term sources such as fusion and MHD—magnetohydrodynamics.

THE ELECTRICITY CRISIS: PROTOTYPE FOR BUSINESS?

(By Charles E. Luce)

To meet the growing electric energy needs of society in ways compatible with a healthful and pleasant environment is the task ahead of the electric utility industry. To do that requires a technological research and development effort of great imagination and intensity. I think we have the necessary imagination. In fact, I do not know of a single area of promising research that is not being pursued—to some extent. It is the intensity of our efforts that is in doubt. At the present level industry may overcome us before we overcome them.

Technology has brought us a long way. Sixty years ago our biggest generator had only 5,000 kw capacity, and it burned 10 pounds of coal to generate a kilowatt-hour. Today we have units of 1-million kw capacity and they burn only two-thirds of a pound of coal—or the oil or gas equivalent—to produce a kilowatt-hour.

Sixty years ago tranmission lines were operating at about 30,000 volts and could carry enough power for a present-day city of about 25,000 people. Today we have lines under construction at 765,000 volts, with carrying capacity on a single right of way sufficient to service a city of 3-million. At the distribution level, we also have made substantial advances, with undergrounding of cables, and better lightning protection. We have come a long way. We are capable of going far beyond where we are today.

Today's R&D in electricity is going forward on many fronts, generally under five auspices: individual companies, the Edison Electric Institute, the Electric Research Council, the manufacturers of electrical equipment and the Federal Government. The EEI reports that individual companies have more than 1,500 projects in progress or recently completed. The EEI effort, financed by member companies, covers 46 projects involving costs or commitments of $48 million. The Electric Research Council has projects under way through the member organizations totaling $30 million plus. The electric equipment manufacturers are spending at the rate of somewhat more than $100 million per year on a variety of R&D projects. The Federal Government is spending approximately $340 million on electric power-related R&D projects, mainly through the Department of the Interior and the AEC.

Technological research under way covers the waterfront controlling stack gases, especially sulfur and nitrogen oxides; new methods of producing electricity such as fast breeder reactors, fusion and MHD (magnetohydrodynamics); the electric car; requirements for cooling water and the effects of thermal discharges on marine life; testing and inspection methods for nuclear plants; high-voltage DC circuit breakers; EHV transmission, both overhead and underground; system reliability.

But we really don't have sharply defined goals: target dates and dollar requirements.

That is why the work of the R&D Goals Task Force of the Electric Research Council is so important. Formed just last fall, the Goals Task Force will give us a final report later this year. It will set forth specific goals to be accomplished year by year between now and 1980, and five-year goals for the remainder of the century. The dollar figures to be attached to these goals will not be based on the money known to be available, but on the amount of money needed. Then, for the first time, we will have a good idea of where we are going and what the cost will be.

Personally I believe that four specific projects must be high on the list of goals. They are:

The breeder reactor, which will greatly extend the world's supply of energy and will operate at higher thermal efficiencies than today's nuclear reactors.

Better processes to remove pollutants from smokestacks and thereby make usable the large deposits of high-sulfur coal in the Eastern United States.

Improved cooling methods, including cooling structures that transmit waste heat directly to the atmosphere or, preferably, increased thermal efficiencies that reduce cooling requirements.

More efficient and economical techniques for underground transmission of electricity at high voltages.

We must have research that will produce quick results, of course, but not at the expense of long-term benefits. Many projects will or may not produce tangible benefits for many years. They must not be sacrificed for more readily attainable short-term goals. Here I have in mind such projects as fusion and MHD. Fusion, for example, would provide a virtually limitless source of power, produce nonradioactive waste materials and increase the thermal efficiency of nuclear power stations.

As for cooling towers, I think we must realize that even if successful in developing dry towers we are really only providing a short-term solution to a long-term problem by changing the heat rejection reservoir from water to air. The real solution is to increase plant efficiency. While the atmosphere may be the ultimate heat sink, it is not an infinite heat sink. We should be aware of this now, well before the limitations are upon us.

Previously, I have estimated that the level of R&D effort for the electric utility industry, exclusive of what the manufacturers do, should be on the order of $200-million to $300-million per year. I do not know what price tag will be on the ERC's goals, but I suspect that if anything it will be higher. The present level of investor-owned electric utility R&D expenditures is about $40 million per year. With costs rising and earnings dropping, the critical question becomes: How are we to finance the level of R&D effort that will be necessary? I am glad that the ERC has formed a finance Task Force to work in harness with the Goals Task Force.

Environmentalists assert, and I think properly, that all of the costs of protecting the environment should be reflected in the cost of goods and services; that air and water and scenic beauty are no longer, if ever they were, "free goods." Alternatively, these costs could be subsidized in whole or part by the government. To that extent, they would be paid by whoever pays taxes.

To me, it seems most equitable that the users of electricity, whose consumption gives rise to the problems would pay for the costs of adequate R&D to reconcile power production with environmental protection. One way to do this would be for the state regulatory commissions to grant rate increases or surcharges to cover each utility's share of the costs.

There are a multiplicity of rate regulatory agencies, however, and they all would have to take the same approach. The publicly owned electric utilities, which supply about 20% of the nation's electricity, typically are not subject to regulation of their rates by the state utility commissions. However, it would be possible for the Federal Power Commission to encourage uniformity in practices regarding R&D expenditures. In its August 1970 report on "Electric Power and the Environment," the Energy Policy Staff of the Office of Science and Technology urged "the regulatory commissions at the Federal and state levels to take positive action to assure that the utility industry can recover R&D expenses in its rates and that the utilities devote a reasonable portion of their large revenues to such expenditures."

An alternative approach would be for Federal legislation to create a trust fund for research. As with the Highway Trust Fund, a user tax would be collected from all consumers of electricity. Since annual revenues of the electric utility industry are on the order of $20-billion, a tax of 1.5% would raise $300-million annually.

Either such a tax or action by the state regulatory bodies would be consistent with the philosophy that all costs of producing energy should be reflected in the price.

There would remain difficult decisions concerning administration of the R&D money. Again there are choices. If the Highway Trust Fund pattern were followed, the electric users' tax would flow into the Federal Treasury to be appropriated by Congress for projects authorized by Congress. The Treasury Department and the Council on Environmental Quality have proposed a penalty tax on the sulfur content of coal, oil and natural gas, with its proceeds going to finance research in ways of lowering air pollution. That proposal is only a step removed from an electric users' tax such as I and others have suggested.

Perhaps the funds could be administered by a Federal agency or agencies with sufficient expertise in the field to establish priorities and perhaps even conduct some research on their own. Whatever the formula decided on for Federal administration of R&D funds, it would be necessary to have consulting committees from the electric utility industry, the manufacturers and environmental groups. If our purpose is to make the production, transmission and distribution of electric energy compatible with environmental protection, environmental groups cannot be left out of the decision-making process.

Another possibility would be for the utilities, which bear so much of the responsibility, to administer the trust fund, perhaps through a modified Electric Research Council. Whatever the final organization, it will need permanent long-range funding and a full-time staff of administrative and technical personnel. The technical staff would be responsible for initiating and evaluating proposals and for technical monitoring of the programs. Advisory groups, including environmental groups and representatives of the Federal Government, could be helpful. Such an organization, let me call it the Electric Research Foundation, would conduct continuous planning and be responsible for integrating individual efforts into a logical, coherent program. It would constantly reassess progress and close out unproductive efforts in addition to initiating projects in promising areas.

Yet another way to administer the research funds would be to establish a non-profit corporation for which the electric utilities of the country would be the holding company. Its purpose would be similar to that of an Electric Research Foundation as regards initiation of proposals, monitoring of projects and dissemination of information.

Perhaps a joint government-industry venture such as the Comsat Corp. would be the way to proceed.

Whatever the route, it might be desirable to build in an additional option, allowing a certain specific portion of the research revenue collected from any utility to be returned to that utility to sponsor research of its own. The big problems our industry faces are industrywide, requiring industrywide approaches, but there are many smaller problems peculiar to the service territory of one or more utilities that also require considerable R&D effort.

I wish to close on a note of caution As important as it is to step up R&D for technological answers to the problems of our industry and society, I think it would be unwise to rely solely on technology. We need, I believe, to couple a strong R&D effort with a strong national policy on conservation of energy—both for ecological reasons and because the sources of energy on the planet Earth are finite. We need, in addition to an intensified research effort, a new environmental ethic, one that would signify a willingness of individuals to forego many luxuries of the affluent society, to forego wasteful consumption of any product or service—including electricity. It would signify, also, a willingness to pay higher taxes and higher prices for the costly facilities necessary to combat pollution effectively. With such an ethic, and with the finest technology that man can discover, we and the people we serve could be meaningfully engaged in a common cause of assuring adequate energy supplies and a pleasant environment.

CHAPTER X—THE CHILDREN AND YOUTH AND MATERNAL AND INFANT CARE PROGRAMS

(Mr. KOCH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. KOCH. Mr. Speaker, this is the 10th in a series of articles on children and youth and maternal and infant care programs. Support for H.R. 7657, as amended, is increasing. The bill which would extend for an additional 5 years the children and youth and maternal and infant care programs which are now slated for oblivion as of June 30, 1972, has at this time 78 cosponsors in the House and 16 in the Senate.

There are at present 59 regional children and youth programs with additional satellites and 56 maternal and infant care programs in existence delivering comprehensive health care to almost half a million children and youth of lower socioeconomic levels in central cities and rural areas. These projects represent one of the major reservoirs of experience in comprehensive health care today, especially to the poor children of the country.

I have received from the directors of these programs descriptions of the programs in their community and what it would mean if their particular program were terminated. To give our colleagues an insight into these programs, I am placing in the RECORD descriptions of six children and youth programs.

The material follows:

CHILDREN YOUTH PROJECT NO. 630—NEW YORK, N.Y.

The Comprehensive Children and Youth Program at Beth Israel Hospital, more popularly known as the I SPY Health Program, an acronym for Infants, School, Pre-School and Youth, has been operational since September, 1967. The program provides total health care on an ambulatory basis for children from 0 to 18 years. The services include medical, dental, nursing, social service, psy-

chiatric, psychological and nutrition. The program is designed to serve the children and families who reside in a specific area of the Lower East Side of Manhattan. This is a low-income area where the median income falls several thousand dollars below the median for the city of New York as a whole.

The delivery of health care is organized around a multidisciplinary team consisting of pediatrician, community health nurse, social worker and family health worker. Each family is assigned to a team and all the children in one family are seen by the same pediatrician and other team members. Home visitation by the nurse and/or the family health worker is done when indicated by the needs of the family.

A supervised playroom has become a place for learning experiences not only for the children but also for the parents who are eager to learn about the stimulating needs of their children as they grow.

Early detection of sensory defects is a prime goal of the program. Vision and hearing screening is part of the health services mandatory for each child.

Because of concern of the program for the health and well-being of the child and family, family planning has been part of the services offered since the program's inception.

Since a large number of the patients and families are Spanish speaking (70 percent) it is essential that many of the staff be bilingual. A parent and child can go comfortably through the program speaking Spanish, being understood and understanding what is happening during the visit.

There are evening clinics so that the working parents will be able to avail themselves of total health services without losing time from work. Also, the mother with a large family is often better able to make provisions for help with the other children in the evening.

Outreach into the community is a very important part of the philosophy of the program. From its start, the program has had a community organizer-health educator who has maintained an active working relationship with the numerous organizations in the area. One of the activities of the health educator has been to incorporate a health component into many of the training programs in the community, such as those given by the school for the family assistants. The program has cooperated with the official health agencies in an ongoing blood lead screening program.

There is a close working relationship with the schools. Members of the mental health group from I SPY have worked directly with school personnel. School suspensions have been averted and more appropriate class placements made because of this on-going contact.

Has the presence of I SPY effected any change in the perceptions or patterns of health care. An interview survey done during the summer of 1969 in the patient's home without any identification of the interviewer with I SPY, revealed some of the following figures.

More than 90 percent of those who identified with I SPY knew their doctor by name. About 80 percent of the mothers knew about the importance of coming for health maintenance rather than just seeking care when the child was ill. The same percentage of mothers were fully informed about their child's immunization status.

If I SPY has to cease operation because of lack of funding, then what? There would be over 5,500 children whose parents would be forced to look elsewhere for care but where else. There would be the forced resumption of acute episodic care, getting somewhere when the child is ill, most likely the emergency room.

What happens to the surveillance of diseases like tuberculosis, anemia, lead poisoning and hepatitis, which thrive in this ame low-income area. Prevention and early detection, an integral part of health supervision at I SPY are the only weapons available to combat the diseases of poverty like those mentioned above.

More tragically a population has had their expectations for health care raised, their health awareness sharpened only once again to have something they value taken away.

The future of our society depends upon what is done for the children today. To keep giving and taking away from a population in need is senseless and unfortunate for the children, the parents and the country.

CHILDREN AND YOUTH PROJECT NO. 612—PHILADELPHIA, PA.

It is with no sense of arrogance that I say that the Rebound Children and Youth Project is probably one of the Projects most deeply rooted in its community in the city of Philadelphia. Serving a target population of 1,500 children in 500 families who are crammed into some of the worst housing in the City as well, the Project has managed to achieve a penetration rate of 80% or about 1,250 registrants in the space of four short years, of whom the vast majority are recipients of the complete package of medical and dental care appropriate to their individual needs. In addition to the attention given to medical and dental care, the Project has served as a force around which the local community has organized to deal with problems such as housing, consumer information, day care, nutrition of school children, and safe places to play for small children. An active and dedicated staff of modes proportions has undertaken this entire venture and in the process gained a wealth of know-how with respect to planning and implementing comprehensive health services to children and their families.

Community members already have a sense of impending doom with just the mention of the legislative process necessary for extension of C & Y funding to 1977. They know from previous experiences that Federal programs tend to come and go and really have little faith that this one will stay, even though its loss would mean a dissolution of what has been their first experience of personalized health care in their entire lives, what for some dozen others would mean a loss of gainful employment, and for still others a loss of a symbol of hope in an otherwise rather bleak environment.

Although this is not a large Project, it represents a unique model of care and statistically its accomplishments are remarkable:

Total registrants—approximately 1250.

Total medical staff—1.8 full time equivalents.

Total nursing staff—4.

Total dental staff—1 dentist/1.5 dental assistants.

Total social work staff—3 social workers; 3 social work assistants; 5 community workers; 3 community organizers.

Visits per month—approximately 800 total.

Medical and dental scheduled and acute per year—approximately 8,000.

Immunizations per year—approximately 600.

Eye glasses per year—approximately 60.

Surgical, ENT referrals per year—approximately 60.

All this in an area which had previously known only fragmented care, impersonal care, and one third of its children arriving at school age without proper immunizations or health supervision.

Even if Health Maintenance Organizations become the model of the future, much valuable ground gained in the past four years will be lost in the Rebound area if C & Y funds are cut short in 1972 before anything moves in to take up the slack.

CHILDREN AND YOUTH PROJECT NO. 616—DETROIT, MICH.

The Michigan Children and Youth project is called Prescad and covers portions of Wayne County as well as selected parts of the City of Detroit. This project was initiated in 1966 and has provided a comprehensive health service to approximately 25,000 children each year. It operates through three major hospitals and five community clinics. Two of the community clinics are large service centers in Detroit serving major populations on the east and west side of the city and three are in western Wayne County serving areas where there are virtually no other health services available. Due to budget limitations, there are some 75,000 children each year who are in need, but cannot be covered by the project.

This program has strong community support and any reduction in service is certain to meet major opposition from community leaders, particularly those among the poor. The project is a major effort to improve health services for the poor. It is successful and limited only by insufficient funds.

CHILDREN AND YOUTH PROJECT NO. 621—KANSAS CITY, MO.

Children and Youth Project 621 has been immeasurable benefit to the patients of the community it serves and since its beginning on April 24, 1967, there have been over 40,000 visits to the disciplines within the project. The program was initiated with the somewhat conservative support of the professional, business and lay community, a support which has increased considerably over the past four years and it is considered that any reduction in services to any degree would have a very detrimental effect on this relationship.

Prior to the C & Y Project there reportedly had been no dental screening services provided to the schools in the project area for about six years. Dental screening was initiated in 1967 and has been continued since that time. The results of screening conducted during the current year reflect a significant decrease for dental care to include not only the number needing care but the extent of service for those who do need such service. Also the requirement for in-patient care for registrants has decreased due to responsive out-patient care provided by the C & Y Community Clinic.

The average cost per C & Y registrant in Project 621 during fiscal year 1970 was $10.88 per month or $130.55 per year. Although 46% of our registrants are eligible for either welfare or medicaid health services and the average cost per patient receiving these services in the State of Kansas during fiscal year 1970 was $124.00, it was acknowledged at a recent meeting with the Director, State Department of Welfare that the care the patients receive is fragmented and the benefit to the individual's health is not possible to measure.

It is believed our C & Y Project is fulfilling its objective of improving the quality of health care services through the comprehensive program and by supplementing the services provided by the Department of Social Welfare, the Wyandotte County Health Department, the health and allied services provided by the Kansas City, Kansas Board of Education, the Wyandotte County Mental Health and Guidance Clinic, and other agencies providing health services in the community.

The Children and Youth Project in Kansas City, Kansas is one of sixty-seven such projects in the United States. It is authorized under P.L. 89-97, the Amendment to the Social Security Act. (The pertinent provi-

sion is Section 532 of Title V, Part 4, of the Social Security Act). These projects are designed to "Promote the health of children and youth of school and pre-school age, particularly in areas with concentrations of low-income families . . .". The purpose of the program is to increase the availability and to improve the quality of health care services, not to replace or reduce State or local community funds, nor to replace services presently available.

In October 1966 the Pediatric Department of the University of Kansas Medical Center was the recipient of a grant from the Children's Bureau of the Department of Health, Education, and Welfare for the establishment of a Project to provide comprehensive health care, both medical and dental, for children and youth 18 years of age and under in four (4) census tracts.

All children of the area qualify for screening, prophylaxis and diagnosis free of charge. There are approximately 7,000 individuals in the area 18 years of age or younger, and it is estimated that 4,000 to 5,000 of these qualify for comprehensive health care at no cost to the individual, utilizing the following indigency standards presently in force at the University of Kansas Medical Center:

Number in Family and Income

1—$2,800 or less.
2—$3,600 or less.
More than 2—Plus $600 for each additional family member.

Prior to applying for the Federal funds to establish a project in the Kansas City area, coordination was made with State and local agencies servicing the community. The project was established under the auspices of the University of Kansas Medical Center. KUMC has the responsibility to meet the 25% matching fund requirement.

Project 621 became operational on April 24, 1967 and provides out-patient medical and dental care in the neighborhood clinic located at 1975 North 5th Street, Kansas City, Kansas. The clinic is staffed with:

One Pediatrician.
Two Resident (KUMC) Pediatricians.
One Dental Director.
Two Project Dentists—20% of time.
One Dental Hygienist.
Two Dental Assistants.
Three Public Health Nurses.
One Station Nurse.
One Nutrition Technician.
One Psychologist.
One Medical Technician (Laboratory).
Two Social Service Workers.
Three Receptionists–Clerks.

As of March 31, 1970, there were 4,454 registrants in the Project. The clinic has about 1,200 visitations each month. Project inpatient care load at KUMC averages about 25–30 patients each month, and there is a monthly average of about 30 patients referred to KUMC for out-patient care not available at the Community clinic.

In addition, the nursing staff has in cooperating with the health department, conducted vision testing and TB skin tests in the schools within the project area and the dental personnel have conducted extensive dental screening in these schools.

The C & Y Project is a service oriented program. Teaching and research are peripheral or adjunct functions of this clinic and are permitted only insofar as teaching and research do not interfere with the service aspects of the project.

Of the total registration 46% are either Welfare or Medicaid recipients or eligible for these services. There are about 195 welfare patients who visit the C & Y clinic monthly for medical services and 115 who visit for dental services; there are about 400 new registrants into the project each year who are welfare or medicaid recipients who require a first visit comprehensive diagnostic examination in the medical and dental services, follow-up visits and routine visits; about 35% of the Laboratory Services available at the Neighborhood Clinic are provided to welfare or medicaid recipients; Public Health Nursing, Psychological testing services and medical social service is provided to all registrants; appliances, i.e. glasses, hearing aids, dentures and prescription medicines are provided to all registrants.

CHILDREN AND YOUTH PROJECT NO. 626—MEMPHIS, TENN.

The Memphis Children and Youth Project was officially approved on January 1, 1967. The project was designed to serve infants and children from low-income families that live in four census tracts of the north-western portion of the city. This area has one of the largest number of "Aid-to-Dependent Children" cases concentrated in the smallest geographical area in Memphis and Shelby County. More than 10 percent of the total case load for the entire county is concentrated in this geographic area. During 1970, the third full year of operation of the project, approximately 77 percent of the 4,500 infants and children were being actively served by the project.

During the first full year of operation (1968) there was a need for 178 individual hospital admissions of project children requiring 964 in-patient hospital days. By the third full year of operation (1970) the number of hospital admissions had decreased to 80 and the number of hospital days to 267. This rapid decrease occurred during the same period of time that the number of active registrants on the program was steadily increasing.

The average length of hospitalization for the Children and Youth Project patients dropped from 5.4 days in 1968 to 3.3 days in 1970. This compares with an average hospital stay in 1970 of 3.9 days for patients of the pediatric age group in the Memphis private practice sectors. It has been concluded that the Memphis Children and Youth Project has brought about a marked decrease in the need for hospitalization for infants and children in the project area. It has been further concluded that after three years of operation, the types of problems requiring hospitalization and the length of stay in the hospital are the same for those infants and children served by the project as for those served by the private practice sector of the Memphis community.

It is believed that the Memphis Children and Youth project has had a tremendous impact on the entire North Memphis community. It has stimulated the development of many new or expanded health and welfare services for the area. As examples, it played a leading role in the development of the North Memphis Action Program (community action agency), the Supplemental Food Program, the decentralization of the Food Stamp Office, the founding of the North Memphis Community Health Center, and the organization of the Community Day Care Association. It is further believed that the Memphis Children and Youth Project can well continue to exert its influence in the North Memphis area by recognizing unmet needs and planning innovative and cooperative methods of developing new programs to meet these needs.

Without the Children and Youth Project, the infants and children being served would no longer have access to comprehensive health care. They would most likely revert to the previous custom of only being seen for episodic care in the emergency rooms of the hospitals.

CHILDREN AND YOUTH PROJECT NO. 634—TRINIDAD, COLO.

The Children and Youth Project #634, located in the Trinidad and Walsenburg area of Colorado, began offering comprehensive medical coverage in October of 1967. The project is based at and works with the local health department, the Las Animas-Huerfano Counties District Health Department. The project provides the only outlet of free care to low income children and youth in a total population of 22,314. Of this number, it is estimated that 8,512 are children and youths between the ages of birth and 18. Further, it is estimated that approximately 5,107 fall into the category considered financially eligible and in need of free care. At the present time 1,975 are listed on the rolls of the project.

Unfortunately the area is isolated and provides the typical reasons many rural areas have that make it difficult to recruit and hold capable medical personnel.

Funding has provided only sufficient monies to hire one physician when two are needed. One physician thus becomes so overburdened that he can provide only acute care to the patient loads separated by 40 miles distance—the distance between Walsenburg and Trinidad. This load of patients is so overwhelming that were it not for his presence, I foresee little care being provided by the already overworked local physicians. We have attempted to coordinate our activities with all local health agencies and have, for example, succeeded in involving our physician and our public health nurses with hospital-based prenatal care. The absence of our physician in this instance would cause a cancellation of this prenatal facility and possibly an absence of prenatal care for many needy C & Y registrants, now estimated at ten per month.

The C & Y personnel function as a team, consisting of a physician, a pediatric nurse practitioner, public health nurses, social service worker, dental hygienist, and—soon to be employed—a nutritionist. The team represents a valuable part of the community, and acting as such, provides an essential community service—comprehensive health care to needy children and youth.

THE NEED FOR PROPER TRAINING OF YOUNG MINDS

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SIKES. Mr. Speaker, my colleague, the Honorable CHARLES BENNETT, has introduced a most significant piece of legislation, which I am pleased to have cosponsored. The bill, H.R. 8782, provides Federal grants to elementary and secondary schools which provide instruction in moral and ethical principles. There is overriding reason why the Federal Government should make such grants available.

The children who will benefit from such instruction are America's own. They are the future hope of the Nation. Tomorrow's leaders are in today's schools and, unless we take affirmative steps to instill patriotic, religious, and citizenship values in their lives, the fate of the United States may well be in question.

It is a proper thing for the Federal Government to become involved. Students today need to learn about the fundamental religious principles upon which this Nation was founded and which are

an important part of the development and life of our Constitution. It is right that the Government encourage the learning of the meanings of patriotism and of the lives and contributions of the men and women who chose country over self and freedom over tyranny.

Our children need to learn the right of lawfulness over the wrong of lawlessness and instruction in this field should be made available with Federal help, if for no other reason than to help stem the tide of juvenile crime, drug abuse, and the terrible waste of young lives caught forever in the tangle of a criminal record.

If America is to retain its position of leadership in world affairs, those who one day will lead this Nation must be taught the significance of moral values, the importance of belief in Deity, and the satisfaction of a life devoted to the benefit of mankind. With proper instruction in these fields, the leadership of our Nation will fall to minds and hands trained to hold sacred those things which have made America great.

In the absence of such training, the quality of our future leaders may well be determined by dope, sex, and turned-off oriented minorities, which have such great impact on the minds of young people today.

I urge speedy and favorable consideration of H.R. 8782.

ON SPACE SPECTACULARS

(Mr. SIKES asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. SIKES. Mr. Speaker, for a long time the United States has held the center of the stage in the space effort. Our moon trips have been spectacular and they have gained us world acclaim. Now there is Soviet achievement in a field which we neglected longer than we should. Particularly in defense circles this achievement has cast a shadow on America's earlier space spectaculars.

While this country concentrated on frequent trips to the moon, the Soviets devoted substantial efforts to the establishment of a space station which now is in orbit above the earth. In cold, hard, practical achievement, this is too important to be taken lightly.

Not until 1973 can the United States hope to match this latest Russian space feat and, by that time, this aspect of the Russian space program may be well ahead of us in technology and, more importantly, in capability to perform a meaningful defense mission in space.

As spectacular as have been our own exploits, the fact is that while we have gained a great deal of scientific knowledge—which we shared with the world—the Russians with their space laboratory are gaining practical knowledge on how to use space to their national and ideological advantage, and how to use it in defense.

We have no way of knowing the military importance of the Russian space station now in orbit nor can we even forecast the extent to which future space stations will be used to gather intelligence, photograph our military installations, and provide the Russians with useful information on keeping men alive and functioning in space.

The United States must decide very soon whether it is to be satisfied with our present limited capabilities in the defense role in space. All the aspects of defense as well as peaceable accomplishments in space must be considered.

A number of years ago America canceled its manned orbiting laboratory midway in its development. The manned orbiting lab would have been a major step in the direction of the recent Russian achievement and it would have placed us ahead of Russia's space station. We are moving now to overcome the Russian lead in this field, but we have far to go.

The money we spend on this aspect of space is but a fraction of the total Federal budget. We must not hold back on the utilization of space for defense. We must increase our effort for we do not understand all the implications of defense in space.

We have in prospect a space shuttle which is a vital element in America's space program. It will function as a transportation system for a skylab program. We cannot afford delays on either. Time is running, and in this aspect of space it is running for the Russians.

NOISE CONTROL

(Mr. RYAN asked and was given permission to extend his remarks at this point in the RECORD, and to include extraneous matter.)

Mr. RYAN. Mr. Speaker, noise and the damage it produces have been growing at an alarming rate. Urban noise has doubled since 1955 and is expected to double again by 1980. Evidence presented at a meeting last month of the International Standardization Organization in Geneva, Switzerland, showed that if this increase continues, every urban dweller will be deaf by the end of this century.

Clearly, the time to act is now.

Noise and its hazards do not have to be the price of progress. Just as for any other form of pollution, the control of noise is not a matter of what we are able to do but of what we are willing to do.

The same technology which has led to the saturation of our urban communities with abusive and intrusive noise, can be put to use to promote a quiet and tranquil environment. Technology is at hand for noise control. What must be done is to apply it to use in our streets, on our airways, in our factories, in our offices, and in our homes.

The right to a quiet, peaceful environment free from the intrusion of unwanted and harmful noise is as basic as the right to clean air and pure water. And government at all levels has a responsibility to insure that this right is protected.

On July 7, 1971, the mayor of New York City proposed a comprehensive noise control code. This code, which will be the subject of hearings before the New York City Council, would set specific noise level standards for many of the major sources of noise. The code would also direct the Administrator of the New York City Environmental Protection Administration to designate within 2 years ambient noise quality zones for New York City.

The proposed code, with its stringent enforcement powers, would play a significant role in alleviating the tremendous burden of excessive noise to which New Yorkers are currently subjected.

But if the problem of noise is really to be combated, it will take far more than action at a municipal level—it will take a concerted Federal program.

In the 91st Congress I introduced legislation to begin such a Federal program for the control, abatement, and prevention of noise. That legislation—the Noise Control Act of 1970—was cosponsored by 20 Members of the House. It provided for the establishment of an Office of Noise Control, established a program of grants to States and local governments and of contracts for noise control programs, and it established a Noise Advisory Council.

This legislation was in part embodied in the Clean Air Act Amendments of 1970—Public Law 91-604—which mandated the establishment of an Office of Noise Abatement and Control within the Environmental Protection Agency.

On February 8 of this year, I conducted an ad hoc congressional hearing on noise pollution in New York City. This hearing was cosponsored by 14 Members of Congress from the New York City area. They were: BELLA S. ABZUG, JOSEPH ADDABBO, HERMAN BADILLO, MARIO BIAGGI, JONATHAN BINGHAM, HUGH CAREY, JAMES DELANEY, SEYMOUR HALPERN, EDWARD I. KOCH, JOHN MURPHY, BERTRAM PODELL, CHARLES B. RANGELL, BENJAMIN ROSENTHAL, and JAMES SCHEUER.

The proposals brought forward at that hearing, together with my past involvement in the area of noise control, and consultation with various experts, led to the development of the comprehensive legislative package for the control, abatement and prevention of noise which I introduced on behalf of myself and more than 35 Members of the House of Representatives on March 30.

This package—the Noise Abatement and Control Act of 1971, H.R. 6986 and H.R. 6987; the Noise Disclosure Act, H.R. 6988 and H.R. 6989; the Occupational Noise Control Act of 1971, H.R. 6990 and H.R. 6991; and the Office of Noise Abatement and Control appropriations bill, H.R. 5043, H.R. 6984 and H.R. 6985—provides a realistic, tough, effective means to combat noise pollution.

OFFICE OF NOISE ABATEMENT AND CONTROL APPROPRIATIONS (H.R. 5043, H.R. 6984, AND H.R. 6985)

Last year the Congress mandated the creation of an Office of Noise Abatement and Control within the Environmental Protection Agency by the passage of the Clean Air Act Amendments of 1970—Public Law 91-604. Although title IV of this act authorized $30 million for the

Office to carry out its functions and responsibilities, the administration has not requested funding sufficient for this Office to fulfill its responsibilities.

In fiscal year 1971 a mere $300,000 has been appropriated for the Office of Noise Abatement and Control and a request for only $1.15 million has been submitted in the administration's proposed budget for fiscal year 1972. This means that the Office would have to function on less than 6 percent of the sum authorized by the Congress.

During the course of testimony before the Subcommittee on Public Health and Environment of the House Interstate and Foreign Commerce Committee, representatives of the Environmental Protection Agency repeatedly stressed the need for indepth research into the field of noise and noise control. In this I concur. But it is my belief that it was the clear intent of the Congress that the Office of Noise Abatement and Control do that research, and do it now, not at some future time as the administration suggests. The words of the Clean Air Act Amendment are clear: "shall carry out through such an Office a full and complete investigation and study of noise and its effect on the public health and welfare" and report its findings to the Congress by December 31, 1971.

Yet despite Congress' intent and in spite of even the administration's statements as to the need for comprehensive noise research, under administration funding requests the Office would not have the tools to carry out its responsibilities adequately.

Therefore, I have introduced legislation—H.R. 5043, H.R. 6984, and H.R. 6985—to provide the full $30 million for this Office, thus making it a functioning reality, not just another paper promise.

Thirty-eight Members of Congress have joined with me in cosponsoring this legislation. They are:

LIST OF COSPONSORS

Bella S. Abzug of New York.
Joseph Addabbo of New York.
Herman Badillo of New York.
Nick Begich of Alaska.
Mario Biaggi of New York.
Jonathan Bingham of New York.
Frank Brasco of New York.
Phillip Burton of California.
James C. Cleveland of New Hampshire.
John Conyers of Michigan.
Ronald Dellums of California.
John G. Dow of New York.
Don Edwards of California.
Ella T. Grasso of Connecticut.
Seymour Halpern of New York.
Michael Harrington of Massachusetts.
William Hathaway of Maine.
Ken Hechler of West Virginia.
Henry Helstoski of New Jersey.
Louise Day Hicks of Massachusetts.
Robert Kastenmeier of Wisconsin.
Edward Koch of New York.
Robert Leggett of California.
Spark Matsunaga of Hawaii.
Abner Mikva of Illinois.
Parren Mitchell of Maryland.
William Moorhead of Pennsylvania.
Claude Pepper of Florida.
Bertram Podell of New York.
Charles B. Rangel of New York.
Thomas M. Rees of California
Robert Roe of New Jersey.
Benjamin Rosenthal of New York.
Edward Roybal of California.
James Scheuer of New York.
John Seiberling of Ohio.
Victor Veysey of California.
Lester Wolff of New York.

NOISE ABATEMENT AND CONTROL ACT OF 1971
(H.R. 6986 AND H.R. 6987)

If we are to have an effective program to combat the hazards of noise, we must do more than merely continue our present research into the problem. Although additional study is certainly needed, we know now enough about the problem and the technology involved to move directly toward abating it. Therefore, I have introduced the Noise Abatement and Control Act of 1971—H.R. 6986 and H.R. 6987—to broaden the functions and responsibilities of the Office of Noise Abatement and Control to enable that office to begin to combat the hazards of noise pollution directly.

Thirty-eight Members of the House have joined with me in cosponsoring this legislation. They are:

LIST OF COSPONSORS

Bella Abzug, of New York.
Joseph Addabbo, of New York.
Herman Badillo, of New York.
Nick Begich, of Alaska.
Mario Biaggi, of New York.
Jonathan Bingham, of New York.
Frank Brasco, of New York.
Phillip Burton, of California.
James Cleveland, of New Hampshire.
John Conyers, of Michigan.
Ronald Dellums, of California.
John Dow, of New York.
Don Edwards, of California.
Ella Grasso, of Connecticut.
Seymour Halpern, of New York.
Michael Harrington, of Massachusetts.
William Hathaway, of Maine.
Ken Hechler, of West Virginia.
Henry Helstoski, of New Jersey.
Louise Day Hicks, of Massachusetts.
Robert Kastenmeier, of Wisconsin.
Edward Koch, of New York.
Robert Leggett, of California.
Spark Matsunaga, of Hawaii.
Abner Mikva, of Illinois.
Parren Mitchell, of Maryland.
William Moorhead, of Pennsylvania.
Claude Pepper, of Florida.
Bertram Podell, of New York.
Charles Rangel, of New York.
Thomas Rees, of California.
Robert Roe, of New Jersey.
Benjamin Rosenthal, of New York.
Edward Roybal, of California.
James Scheuer, of New York.
John Seiberling, of Ohio.
Victor Veysey, of California.
Lester Wolff, of New York.

In essence, the Noise Abatement and Control Act of 1971 directs the head of the Office of Noise Abatement and Control to prescribe standards on all noise-generating machinery that may endanger the public health and welfare; creates a system of grants and contracts to provide Federal funds to levels of local government so that they can combat noise; and establishes a Federal procurement policy to effectuate a more quiet environment.

Specifically the bill does the following:

First. It directs the head of the Office of Noise Abatement and Control to prescribe standards for any machine, or class of machinery which he determines contributes to, or may contribute to, noise which endangers, or contributes to endangering, the public health and welfare, and sets stringent enforcement powers. If the head of the Office fails to take action against a violator within 60 days, this bill authorizes suits by private citizens or groups against the noise polluter and the head of the office, as may be appropriate.

Second. It directs the Office, and all Federal agencies, as well as all Federal contractors to effectuate a quieter environment by use of the Federal procurement and contracting power.

Third. It directs the Office to coordinate the efforts of the Federal Government that relate to noise control, abatement, and prevention. To this end all instrumentalities, agencies, and departments of the Federal Government are directed to furnish the Office with such information as it may require. Further, each such entity of the Federal Government is directed to carry out the program within its control in accordance with the purpose of this title—the creation of a quieter environment.

In any case where a level of Federal Government is carrying out or sponsoring an activity resulting in noise which the head of the Office determines amounts to a public nuisance or is objectionable, such Federal entity must consult with the head of the Office to determine possible means of abating the offending noise.

The Office is to compile and publish a regular report as to the efforts and activities of the Federal Government and its instrumentalities, agencies, and departments in regard to noise.

Fourth. It authorizes the Office to provide technical assistance to States, counties, municipalities, and regional governmental bodies, commissions, and councils to facilitate their development of noise control programs.

Fifth. The Office is authorized to make grants to States, counties, municipalities, and regional governmental bodies, commissions, and councils for the purposes of developing, establishing, and carrying out programs of noise control and for research into the causes and effects of noise and new techniques of controlling, preventing, and abating noise.

There is authorized to be appropriated for these grants $5 million for the fiscal year ending June 30, 1971; $10 million for fiscal year 1972; $15 million for fiscal year 1973; $20 million for fiscal year 1974; and $25 million for fiscal year 1975.

Sixth. The head of the Office is authorized to make grants to any public or nonprofit private agency, organization, or institution, or to engage by contract the services of any such agency, organization, institution, or of any individual to conduct research into noise pollution; to provide training of professional and technical personnel in noise control techniques, methods and approaches; to establish and conduct demonstration projects relating to noise control.

For these purposes, there is authorized to be appropriated $5 million for fiscal year 1971; $7 million for fiscal year 1972;

$10 million for fiscal year 1973; $12 million for fiscal year 1974 and fiscal year 1975.

Seventh. It authorizes the Office to prepare, publish, and disseminate educational materials relating to the control, prevention, and abatement of noise.

Eighth. The Office is directed to submit to the Congress in July of each year, a report concerning its activities. Currently, the Office only has to make one such report, and that is before December 31, 1971. This section will give the Office permanence not embodied in present law.

Ninth. For the purpose of advising the head of the Office on matters bearing on his responsibilities under this title, a Noise Control Advisory Council of nine individuals skilled in fields relating to matters to be considered by the Office is established. Once each fiscal year, the Council must submit to the Administrator of the Environmental Protection Agency and to the Congress a report containing full and complete information on its work.

THE NOISE DISCLOSURE ACT (H.R. 6988 AND H.R. 6989)

One of the prime reasons that the level of noise has increased so greatly over the past few decades—having doubled since 1955—is that the consumer has been unable to obtain reliable information necessary to take noise as a factor when considering the purchase of a product.

Thus, I have introduced legislation—the Noise Disclosure Act—which requires that all new mechanical and electrical equipment transported in, sold in, or introduced into interstate commerce must have affixed to it a label or plate disclosing its operational noise level.

The only items that could be exempted from this labeling requirement are those that have an operational noise level "so low as to be negligible" and as to which "information with respect to such noise level will not be of value to the user."

Pursuant to this legislation, the Administrator of the Environmental Protection Agency is directed to prescribe regulations establishing standard procedures for measuring the operational noise level of all classes of machinery and to prescribe the form and content of plates or labels which are required to be affixed to machinery and their containers.

This Noise Disclosure Act will allow the consumer to know the noise-generating potential of a mechanical item he is contemplating buying, thereby affording him the opportunity to take that product's noise level into account as a factor in his purchase decision. Thus, he could choose not only the quieter of two automobiles or pneumatic drills, but the quieter of two electric razors or air-conditioners.

It is essential that—if we are to lower the ambient noise in our communities—quiet be a factor in each and every purchase.

Further, this legislation would serve as incentive for manufacturers to produce products with quiet in mind.

Thirty-four Members of Congress have joined me in cosponsoring the Noise Disclosure Act. They are:

LIST OF COSPONSORS

Bella S. Abzug, of New York.
Joseph Addabbo, of New York.
Herman Badillo, of New York.
Nick Begich, of Alaska.
Mario Biaggi, of New York.
Jonathan Bingham, of New York.
Frank Brasco, of New York.
Phillip Burton, of California.
James Cleveland, of New Hampshire.
Ronald Dellums, of California.
John G. Dow, of New York.
Don Edwards, of California.
Ella Grasso, of Connecticut.
Seymour Halpern, of New York.
William Hathaway, of Maine.
Ken Hechler, of West Virginia.
Henry Helstoski, of New Jersey.
Louise Day Hicks, of Massachusetts.
Robert Kastenmeier, of Wisconsin.
Edward Koch, of New York.
Robert Leggett, of California.
Abner Mikva, of Illinois.
Parren Mitchell, of Maryland.
William Moorhead, of Pennsylvania.
Claude Pepper, of Florida.
Bertram Podell, of New York.
Charles B. Rangel, of New York.
Thomas M. Rees, of California.
Robert Roe, of New Jersey.
Benjamin Rosenthal, of New York.
Edward Roybal, of California.
James Scheuer, of New York.
John Seiberling, of Ohio.
Victor Veysey, of California.

OCCUPATIONAL NOISE CONTROL ACT OF 1971 (H.R. 6990 AND H.R. 6991)

Although noise is a hazard in all environments, particular attention must be given to the workplace. It is here that most Americans are prisoner for 25 percent of their working lives. Here, too, is where they are often subjected to the most severe and constant noise.

On May 29, the Secretary of Labor published in the Federal Register the noise exposure limitations he has promulgated under the new Occupational Safety and Health Act—Public Law 91-596. However, these standards are demonstrably too lax to protect the majority of working men and women. Scientific research has clearly shown that prolonged exposure to noise levels of 85 decibels or more will result in permanent hearing impairment for the average individual. Yet, these new standards afford no more protection than the old Walsh-Healey standards—90 decibels for an 8-hour day.

It is interesting to note that in January 1969, the outgoing Johnson administration proposed noise standards considerably more stringent than these, restricting workday exposure to 85 decibels.

In order to insure more adequate protection for workers from excessive and harmful noise than that afforded by those standards now set under the Occupational Safety and Health Act, I have introduced legislation which would amend that act to direct the Secretary of Labor to promulgate noise exposure limitations no less protective than provided in the following table:

Permissible noise exposures: sound level, dba

Duration per day (hours):	
8	80
6	82
4	85
3	87
2	90
1½	92
1	95
½	100
¼ or less	105

This legislation—the Occupational Noise Control Act of 1971, H.R. 6990 and H.R. 6991—would produce an across-the-board reduction of 10 decibels from the levels currently in effect. Because of the nature of the decibel scale, a reduction of 10 decibels means that the perceived loudness would be cut in half.

Thirty-five Members of Congress have joined with me in cosponsoring the Occupational Noise Control Act of 1971. They are:

LIST OF COSPONSORS

Bella Abzug of New York.
Joseph Addabbo, of New York.
Herman Badillo, of New York.
Nick Begich, of Alaska.
Mario Biaggi, of New York.
Jonathan Bingham, of New York.
Frank Brasco, of New York.
Phillip Burton, of California.
James Cleveland, of New Hampshire.
John Conyers, of Michigan.
Ronald Dellums, of California.
John Dow, of New York.
Don Edwards, of California.
Ella Grasso, of Connecticut.
Seymour Halpern, of New York.
Michael Harrington, of Massachusetts.
Ken Hechler, of West Virginia.
Henry Helstoski, of New Jersey.
Louise Day Hicks, of Massachusetts.
Robert Kastenmeier, of Wisconsin.
Edward Koch, of New York.
Robert Leggett, of California.
Abner Mikva, of Illinois.
Parren Mitchell, of Maryland.
William Moorhead, of Pennsylvania.
Claude Pepper, of Florida.
Bertram Podell, of New York.
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Thomas Rees, of California.
Robert Roe, of New Jersey.
Benjamin Rosenthal, of New York.
Edward Roybal, of California.
James Scheuer, of New York.
John Seiberling, of Ohio.
Lester Wolff, of New York.

Americans have been studying noise for over 100 years; Europeans have been studying it even longer. Yet, despite our awareness of the existence of this problem, virtually nothing has been done to control it.

Whatever the reason for our past tolerance of an increasingly serious condition, one thing is clear: we can no longer allow it to continue unabated.

Concern for the cost of preventing and controlling noise must be replaced by the realization that it costs less to control noise than to endure it. No one can put a price tag upon one's hearing, one's right to enjoy one's health, to live free from annoying stimuli, to rest and sleep free from disruption. Surely it is basic to the domestic tranquility and the pursuit of happiness that the citizen has the freedom to open his senses to the full appreciation of the beauties and pleasures of pleasing sounds without the hazards of abusive and injurious noise.

At this point I include in the RECORD articles by Steve Lawrence published in the New York Post of July 7 and 8 describing the proposed New York City Noise Code. I am also including an article by Alfonso Narvaez from the July 8

New York Times and an article by Fred Loetterle printed in the July 8 New York Daily News, both on the New York City Noise Code.

I am also inserting a New York Times article of July 1 outlining New York City Environmental Protection Administrator Jerome Kretchmer's criticism of the administration's noise control proposal and endorsing my legislative package.

The material follows:

[From the New York Post, July 7, 1971]

SHH! ANTI-NOISE CODE IN COUNCIL

(By Steve Lawrence)

Mayor Lindsay today unveiled a new law designed to clamp tougher controls on city noise.

The proposed law, which goes to the City Council for hearings and approval, puts specific noise limits on construction equipment, air conditioners, emergency sirens and garbage trucks. It provides maximum 30-day prison sentences and $2000-a-day fines for violators.

And it requires the Environmental Protection Administration to establish within two years general noise limits called ambient levels, that will be allowed in business, residential and commercial districts.

"It has been suggested that New York City may be one of the noisiest cities in the world," EPA chief Jerome Kretchmer said. "With this code we hope to lose that distinction."

The Mayor, in a prepared statement, said the code was "a vital step toward preserving the health and comfort of all New Yorkers."

A study prepared by the Mayor's Task Force on Noise Control last year found that the clamor in the city had "reached a level intense, continuous and persistent enough to threaten basic community life."

EPA, which wrote the code, said in an analysis of the new law that it was attempting to replace the present "piece-meal approach" to noise control "with a body of regulations that will not only apply specific limits where feasible, but will also define and maintain general noise standards for geographical areas of the city."

The proposed law, with its specific limits, includes the existing prohibition against "unnecessary noise."

The new code has been in preparation for nearly a year, and has been on the Mayor's desk for several weeks, prompting some speculation that Lindsay has been pressured by business and construction interests to water down some provisions.

MAY SHUSH SUBWAY

EPA officials have consistently denied this. But reliable sources said there have been some changes, mainly in the sessions on subway noises and permissible construction hours.

The subway sections are unlikely to satisfy many anti-noise advocates who would like to see the MTA make a major investment in muffling the screech and roar of the rapid transit system. The code, as written, gives EPA authority, within one year of the law's passages, to set "allowable sound levels . . . for the design of new and existing rapid transit railroads."

But the code clearly does not anticipate major expenditures for quieting the existing system. "With respect to existing rapid transit railroads," the code says, "allowable sound levels and acoustical performances standards shall be limited to those which are reasonably attainable without additional expenditures."

Construction activity, under the new code, is allowed in residential and commercial areas between 7 a.m. and 6 p.m. Originally, according to reliable sources, EPA wanted to move the time up an hour, so that construction could not begin until 8 a.m., but could continue until 7 p.m. "We thought there'd be less chance of disturbing people's sleep that way," a source said.

The new code will force the use of quiet construction equipment by the end of this year, with tougher noise limits on this equipment established in each of the next two years.

The code also would allow private citizens to collect a share of any fine imposed as the result of their anti-noise pollution investigations.

[From the New York Post, July 8, 1971]

NEXT STOP—NOISE ON SUBWAYS?

(By Steve Lawrence)

The Environmental Protection Administration's proposed noise code could be the leverage EPA has been waiting for to do a major study of noise pollution in the city's ear-shattering subway system.

Since last November, EPA officials have been trying to work out an agreement with MTA chairman William Ronan to conduct such a study. The negotiations have been stalled, according to reliable sources, in part because of the Authority's lack of enthusiasm, and in part because of EPA's hesistancy to push the point without the noise code.

EPA noise experts are confident that a subway study would confirm what they have suspected all along, that constant exposure is screeching trains puts New Yorkers' nerves on edge and in many cases leads to gradual hearing loss and high blood pressure.

WOULD SET SUBWAY STANDARDS

"We are going to get down in the subways," EPA head Jerome Kretchmer said. "Hopefully with the introduction of the code, EPA's role in combatting subway noise pollution has been made clear."

The proposed code requires EPA, within a year of the law's passage, to set "allowable sound levels and acoustical performance standards for the design and operation of new and existing rapid transit railroads."

But the code now contains a loophole with which some enironmentalists believe could exempt the existing subway system from having to conform to any meaningful standards.

"Allowable sound levels and acoustical performance standards," the code says, "shall be limited to those which are reasonably attainable without additional expenditures."

In other words, for the existing subway system, EPA can only set noise standards that the MTA can meet without asking for more money.

SEES NO-COST SOLUTIONS

Robert Bennin, EPA's Noise Abatement Bureau chief, denied that this provision would keep his agency from muffling the subways. "They could cut the noise significantly, by using the money they already have more effectively," he said.

Bennin said EPA would use the code to try to get the MTA to provide welded rails, sound-deadening titles in subway stations and other noise controls which he said "would not add significant costs to their budget."

An MTA official said he could not comment on Bennin's plan, because the Authority had not seen the new code yet. "We will of course consider any such proposals," the spokesman said.

[From the New York Times, July 8, 1971]

LINDSAY PROPOSES A NOISE CONTROL CODE

(By Alfonso A. Narvaez)

Mayor Lindsay yesterday proposed a comprehensive noise-control code that would set limits for the first time on many of the major sources of urban noise.

The proposed code, which goes to the City Council for hearings and approval, sets specific noise-level standards in decibels, for construction equipment, air-conditioners, public-address systems, garbage trucks, emergency sirens and other city noises.

The code will not affect some of the major irritants to city dwellers such as aircraft noise, automobiles, motorcycles, subways and commuter railroads. Many of these come under Federal and state regulations and further studies must be made before regulations are proposed for subway and commuter lines.

The code would establish a system of fines of up to $2,000 a day for corporations convicted of violating it. An individual would be liable to be put in jail for up to 30 days for each day of a violation of an order of the Environmental Control Board, created by the code, or a violation of the licensing provisions of the code or if he breaks a noise-regulating seal on any equipment.

The code would also empower the Administrator of the Environmental Protection Administration to place certain types of equipment, which create noise in their operation, on an operating certificate list, with certain standard levels of noise permitted.

The certificate would be granted if the machinery could be operated within tolerable noise levels and could be revoked if the machinery were found to be operated improperly.

The proposed code would also have the administrator designate within two years ambient noise quality zones for the entire city, with noise criteria and standards appropriate to each zone. The zones would have to be approved by the Council.

Individual noise limits would be set for each zone, and proposed land uses within a given zone would have to be in accordance with the ambient noise standards set for that zone.

In the proposed code, ambient noise levels are defined as "the all-encompassing noise associated with a given environment, being a composite of sounds from many sources near and far."

NOISE LEVEL CALLED HIGH

The proposed code states that it is city policy "that every person is entitled to ambient noise levels that are not detrimental to life, health and enjoyment of his property." It also declares that persons who create excessive or unnecessary noises within the city "are a menace to the public health, comfort, convenience, safety, welfare and the prosperity of the people of the city."

Jerome Kretchmer, head of the Environmental Protection Administration, said that the code "was designed to replace current piecemeal legislation with a body of regulations that will not only apply specific decibel units wherever feasible, but will also define and maintain general noise standards for geographical areas of the city so that noise pollution can be systematically prevented and abated."

"It has been suggested that New York City may be one of the noisiest cities in the world," Mr. Kretchmer said. "With this code we hope to lose that distinction."

Mr. Kretchmer added that current noise legislation was ineffective because noise levels were not defined and no enforcement machinery was provided.

In a statement accompanying the proposed code, the Mayor urged the Council to have "New York City take the lead in the problem of reducing noise."

"The problem of noise affects the way we live and work," the Mayor said. "Strong legislation, which leads to action by both the public and private sectors, is a vital step toward preserving the health and comfort of all New Yorkers."

The 48-page code was prepared by the City's Bureau of Noise Abatement and the Environmental Protection Administration following a study of the noise problem in

the city from 1968 to 1970 by the Mayor's Task Force on Noise Control.

Mr. Kretchmer spoke to newsmen outside City Hall as he stood next to a yellow noise-monitoring van bearing the lettering "Noise Makes You Nervous and Nasty." He said that the proposed code would require that garbage trucks built after Dec. 31, 1972, be operated at a noise level no louder than a vaccum cleaner and that sirens make no noise louder than midtown traffic.

The code continues present prohibitions against unnecessary noise but adds specific decible limits on the operation of existing air compressors and sets lower decibel levels for equipment manufactured after Dec. 31, 1971. The decibel levels for existing air compressors would be set at 90 dbA (decible measurements on a weighted "A" scale, which places more emphasis on high-pitched tones, to which the human ear is more sensitive). By December of the following year, allowable levels would be 83 dbA's and by 1974 they would be 75 dbA's. New compressors would have to be about five decibels quieter.

Similar procedures would be set up for air-conditioning equipment, sirens, horns, pavement-breakers and refuse compacting trucks. In addition, burglar alarms on businesses and private dwellings would have to have automatic devices that would shut off the alarms after 15 minutes.

Jet engine noise and noise from other aircraft would not be affected by the code because the Federal Aviation Administration regulates these. Noise from motor vehicles comes under regulations of the state, which has pre-empted such legislation and forbids the passage of local laws inconsistent with or duplicating existing state limits.

Technicians on the noise monitoring van of the Bureau of Noise Abatement said that the noisiest area in the city that they had monitored was in the vicinity of 46th Street and the Avenue of the Americas where construction is under way and six air compressors raised a din at a reading just below the level that would inflict pain, but much higher than the level that could cause physical injury if a person were subjected to the noise continuously.

[From the New York Times, July 12, 1971]

LESS NOISE, PLEASE

If Mayor Lindsay succeeds in seriously reducing the decibels now afflicting this city, he will have earned the gratitude of New Yorkers who do not even realize the daily damage being done to their nervous systems.

Man can protect his vision by closing his eyes or at least shading them against irritating light. But he cannot close his ears to the jackhammers that tear up the streets, the compressors and earth-movers and pneumatic drills, the maddening garbage trucks and the screaming sirens—all in addition to the dull roar of traffic and the not so dull roar of trucks with bad mufflers.

We may not all be deaf by the year 2000 and forced to talk in sign language, as the more sensational prophets predict, but there is evidence that loss of hearing is increasing at a far faster rate than the population itself. What is more, medical authorities link the din of modern life to the increased incidence of ulcers, high blood pressure, heart attacks, mental illness and even damage to unborn babies.

The city is legally unable to legislate against some of the worst sources of noise—jet planes, for example, which it must leave to overindulgent Federal regulation, and noisy cars (other than its own vehicles), which come under even more indulgent regulation by the state. The proposed anti-noise code is designed to set reasonable decibel limits for construction equipment, air-conditioners, public-address systems, sirens and other city noises that are not the province of Federal or state authorities.

There is more than enough challenge in these to satisfy the most ardent enforcement agency. If the City Council accepts the Mayor's proposals there will be, for the first time, penalties commensurate with the offense—with fines up to $2,000 a day for corporate violators and thirty days in jail for individuals for each day of violation.

The code may fall particularly hard on builders, though they would be given adequate time to modify or replace equipment. Most New Yorkers will agree, however, that an offense to the ear from this source is not justified by what, on the basis of recent years' experience, will in all probability turn out to be an offense to the eye as well.

[From the New York Times, July 1, 1971]

KRETCHMER SCORES NIXON'S BILL FOR CONTROL OF NOISE POLLUTION

WASHINGTON, June 30.—Jerome Kretchmer, Environmental Protection Administrator for New York City, told a Senate Commerce Subcommittee today that the Nixon Administration's noise control bill "would condemn our citizens to continue suffering for years noise levels that could be abated by existing technology."

He also said the bill "would stunt and thwart any meaningful action at the local level."

In testimony before the Subcommittee on the Environment, Mr. Kretchmer described a bill introduced in the House by Representative William F. Ryan, Democrat of Manhattan, as "vastly preferable" to the Administration bill.

William D. Ruckelshaus, administrator of the Environmental Protection Agency, told the subcommittee that he regarded amendments designed to toughen the Administration bill as too strict.

"We have no objection in principle to setting time limits for action," he said, "but those proposed [by the amendments] are too short and inflexible to permit development of the kinds of criteria and standards necessary to do the jobs."

PUBLICATION CALLED FOR

The amendments, proposed last week by Senator Mark O. Hatfield, Republican of Oregon, would require the publication of standards for the major sources of noise identified in the bill within one year of the bill's enactment.

Mr. Ruckelshaus asserted, "The whole area of noise reduction should be recognized as one in which knowledge of effects, measurement and controls is relatively limited."

Mr. Kretchmer said, however, "If the standards section is left unchanged, it will actually hinder effective local action."

He said the section "denies to state and local agencies the power to set noise-generation standards that differ from Federal standards and flies in the face of any reasonable approach to noise abatement."

Local agencies are authorized by the bill to set varying time limits on noise sources, but they may not set any decibel standards, higher or lower, other than those established by the Federal agency.

John C. Schettino, deputy director of the Office of Noise Abatement and Control, said in an interview that recommendations by Mr. Kretchmer that the Federal agency set only minimum standards would result in "chaos."

FINANCING CRITICIZED

Mr. Kretchmer was also critical of the bill's lack of Federal financial support for local programs. "Unless a meaningful funding program for local agencies is included," he said, "most cities will be unable to attack the noise problem at all."

The Ryan bill, which Mr. Kretchmer supports, calls for $5-million in Federal support for local programs this year. The appropriation would increase by $5-billion each year until 1975, when $25-million would be made available.

Mr. Kretchmer and Mr. Ruckelshaus also disagreed over the need to make standards on machines retroactive to include all those in use. The Administration bill requires that muffling devices be attached only to machines manufactured after the date the standards are set.

"This would mean that there is no real hope for relief from the noise assailing our ears until the thousands of existing aircraft, compressers, jack hammers and other equipment producing this noise are worn out and thrown on the scrap heap," Mr. Kretchmer said.

Mr. Ruckelshaus said it was not necessary to make the measure retroactive because "we are approaching this problem before it reaches the crisis level."

[From the New York Daily News, July 8, 1971]

MAYOR'S MUTING MOTTO: NO NOISE IS GOOD NOISE

(By Fred Loetterle)

Shhhhhh!

A noise pollution control code—designed to tone down the daily symphony played by pounding jackhammers, screaming sirens and screeching garbage trucks—was proposed by Mayor Lindsay yesterday.

If passed by the City Council, the unprecedented document would signal the start of a war on audible pollution.

The 48-page code would authorize the Environmental Protection Administration to act specific noise nevels for the entire city. However, the role's guide points out that three major noise sources would not come under its domain—airplanes are subject to federal regulation, cars are subject to state regulation and the city claims that more study is required before subway noise standards can be set.

HOUSEHOLD DEVICES INCLUDED

Garbage trucks built after Dec. 31, 1972, would be required to be as quiet as vacuum cleaners; fans, air conditioners and other circulation devices would be toned down to normal conversation levels and sirens too would have to be quieter.

The code could subject violators to penalties as high as a 30-day jail term, a $500 a day fine for violations by individuals and a $2,000 a day fine for corporate offenders.

The code would empower the environmental agency's chief to place various noise-making devices on an operating certificate list and require periodic renewal to insure proper standards.

COULD INFLICT PENALTIES

The city's Environmental Control Board could revoke or suspend a certificate, seal a faulty device pending repairs and impose penalties after a public hearing on the charges.

The penalties would be doubled for all offenders who failed to pay the fines.

The proposed code contained a number of almost-audible loopholes:

It would permit construction activity in residential neighborhoods on weekends. Present law limits almost all such construction to weekdays.

The restrictions on air compressors used at construction sites are hazy. The confusions stem from the code's references to two different kinds of decibel scales.

The code defines "construction" as activities related to buildings, "enclosed structures." It does not clamp down on noise created in the construction of highways, bridges and other, nonenclosed structures.

The code was prepared largely by Environmental Protection Administration lawyer Fred Weber and Robert S. Bennin, director of the city's Bureau of Noise Abatement.

A NEED FOR BOTTLED DRINKING WATER STANDARDS

(Mr. MONAGAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MONAGAN. Mr. Speaker, perhaps the fastest growing industry in the United States during the last 2 years has been the sale of bottled drinking water. Once considered a luxury or a health cure, bottled water is now considered a necessity by many, a necessity which overcomes the apprehension some people have about their local water supplies. A variety of brands can now be found on the shelves of most supermarkets. In some places, the water is dispensed in vending machines, and in many communities, it is even delivered door-to-door with the morning milk and orange juice.

In light of this increased growth, it is sobering to note that no specific and uniform Federal standards exist to assure the quality and safety of bottled water products. While some State laws do exist, they are vague in most cases, and no machinery has been established to enforce and administer the regulations. Several States have no law at all.

On February 10, I introduced legislation to remedy this situation. My bill, H.R. 4147, would direct the Administrator of the Environmental Protection Agency to prescribe minimum health and safety standards for bottled drinking water if after scientific investigation he determined such standards to be necessary. The bill makes illegal the interstate transportation of any bottled water products which fail to meet these standards.

The Washington Evening Star recently sponsored a series of tests on tap and bottled water which dramatically illustrate the need for this legislation. The test results, published in the Star on July 11, show that of four bottled waters tested, three were found to contain much higher levels of bacteria than the six tap waters that were tested. Interviews following up this survey indicate the enormous degree of ambiguity over who should regulate bottled water products. State officials leave the problem up to the Federal Government; the Federal Government leaves it up to the States.

My legislation, by establishing clear responsibilities and specific regulations, will clear up this confusion. I shall include here the Washington Star survey of bottled water to which I have referred. I urge my colleague to give it careful consideration, and then join me in working for passage of H.R. 4147:

THE WATER TEST: IT WAS AREA TAP WATER VS. BOTTLED

(By John Fialka)

Washington area residents who still trust the water from their local waterworks are drinking unpolluted, relatively bacteria free waters that are monitored regularly by a variety of government agencies.

Washingtonians who have switched to some kinds of bottled water may be drinking water that has a high bacteria content and-or one that has arrived in the area without being checked by any government regulatory agency.

These are the results of a series of water tests conducted at Georgetown University, sponsored by The Star.

The tests, conducted under the direction of Dr. Rita R. Colwell, a microbiologist, showed that of six local tap waters tested, none exceeded a total bacteria count of 7,000 per liter. (A liter is slightly more than a quart.)

Of four bottled waters tested, including two regional varieties and two nationally known brands, one was found to be bacteria free. However, the other three were found to contain much higher levels of bacteria than any of the tap waters, ranging from 50,000 to 500,000 in a liter.

According to Dr. Colwell, such a high bacteria count means that the three brands of bottled water "should be boiled before being given to an infant."

In addition, she said, the brand with the highest count has "at least the potenial" of having bacteria that are harmful to adults.

After the test results were disclosed, a reporter contacted the health departments of the District, Arlingon, Alexandria, Fairfax, Prince Georges and Montgomery counties to see if any local health authority makes regular checks on the quality of bottled water.

Although they regularly make checks on tap water and on such bottled food items as milk, no local health department has any regular system set up for checking samples of bottled water, currently enjoying booming sales in local grocery stores.

In the Star tests, a laboratory technician collected water samples from public water fountains and rest room taps supplied by six area water systems: the U.S. Army Corps of Engineers, which supplies the District and Arlington and Falls Church; Fairfax County, which supplies parts of the county, and Alexandria; the Washington Suburban Sanitary Commission, which services most of Montgomery and Prince Georges counties, and the cities of Rockville, Upper Marlboro and Fairfax, which have their own water systems.

The technician also purchased four samples of bottled water, Three brands, Poland, Mountain Valley and Great Bear, were bought in supermarkets in half gallon containers. Two quart bottles of a fourth brand, Deer Park, were obtained in a liquor store. Most tests were conducted with duplicate samples.

All were tested in the Georgetown University Biology Department laboratory under identical conditions. Samples of each were placed on separate bacteria culture plates containing six different mediums.

The mediums, each made with a basis of agar, a jello-like substance, were designed to provide growth support for various types of bacteria that could be found in water.

All of the water samples passed the standard, U.S. Public Health Service test, which is designed to detect bacteria of the coliform group, which includes types of germs found in human excrement.

The federal standard, published in 1962 and adopted by many states, is currently being revised to include other tests.

Of the local tap waters tested, two were found to be nearly sterile. A sample of water from the city of Rockville's system, taken from a tap in the cafeteria of the Montgomery County Office Building, produced only 50 bacteria per liter after one week.

A sample from a water fountain in the Prince George County Court House, which is served by two deep wells owned by the city of Upper Marlboro, yielded less than 100 bacteria per liter.

According to a Prince Georges Health Department spokesman, the Upper Marlboro water is nearly pure when it comes from the wells and requires only a small amount of chlorination.

A sample of District water, obtained from a rest room tap in the U.S. Capitol, produced a total bacteria count of 785 bacteria per liter.

The highest bacteria count found for local tap water came from a sample of Fairfax County water, collected from a faucet in Alexandria's City Hall, which had 7,000 colonies per liter.

None of the area tap waters produced significant growth in cuture plates designed to detect anaerobic bacteria strains, which can grow without oxygen, or in plates made with a mxiture of sheep's blood designed to detect bacteria strains which destroy red blood cells.

Of the four brands of bottled water tested, one Mountain Valley Mineral Water, was found to be completely free of bacteria. No bacteria colonies appeared on any of its six culture plates after 24 hours, 48 hours or one week of observation.

However, samples of another brand, Deer Park Mountain Spring Water, yielded the highest bacteria count of any of the ten waters tested.

The samples of Deer Park water, according to Dr. Colwell, had "a minimum of 500,000 bacteria per liter."

The bacteria count included sizable colonies of bacteria which grew on the sheep's blood and in the anaerobic culture.

[Bacteria count per liter]

Tap Water:	
Washington Suburban Sanitary Commission	115
City of Rockville	50
City of Upper Marlboro	100
Fairfax County	7,000
Fairfax City	4,050
U.S. Army Corps of Engineers (District, Arlington and Falls Church)	785

Dr. Colwell strongly emphasized that both tests are only used as indicators and do not pinpoint the presence of pathogenic bacteria, or those harmful to human health.

Bacteria that destroys sheep's blood could contain harmless strains as well as harmful ones, such as streptococci. Anaerobic cultures could contain harmless strains as well as ones that can grow in improperly canned foods and cause food poisoning.

Bottled waters:	*Bacteria count per liter*
Deer Park	500,000
Poland Water	50,000 to 500,000
Great Bear	140,000
Mountain Valley	Sterile

Without further extensive tests, including animal injections, it would be difficult to say precisely what types of harmful bacteria were present, she added.

"We don't know for a fact that they're there, but with such a high count I would suspect a potential hazard," Dr. Colwell stated.

"This is a field that has been neglected and needs much more study. People are led to believe that because they buy something in a container that it must be sterile.

"Some people may drink bottled water for aesthetic reasons. Speaking as a microbiologist, all I can say is that I would not drink bottled water for aesthetic reasons," she concluded.

The sample of Poland Water produced a count which she estimated to be in a range between 50,000 and 500,000 per liter. However, only a small number of the bacteria were found to destroy the sheeps blood and no anaerobic bacteria were found to be present.

The sample of Great Bear water yielded a count of 140,000 bacteria per liter. At the end of 48 hours it had produced a sizeable culture of bacteria growing in the sheeps blood agar, but no anaerobic bacteria were found.

Local tap waters were found to be no different from bottled waters in a separate chemical test for the presence of mercury. All were found to have negligible quantities, about .05 parts per billion.

Asked about the bacteria counts, representatives of the companies that produce Deer Park and Poland water said they were "surprised."

"I can't comment on anyone else's findings," said Robert Ethier, a biologist in charge of product quality control for the Nestle Co. Inc., which owns Deer Park.

Ethier said that, although some bottled water companies treat their water with ozone to remove bacteria, Deer Park bottles it "just the way it comes out of the ground" from a spring in western Maryland.

He said Deer Park runs its own quality control and its product is checked by several state health departments. "I'm sure it didn't leave our plant that way, but you know a lot of things can happen to a bottle before it arrives at the store."

W. J. Alford, president of the Poland Water Company, said that he was "distressed" to hear of the high bacteria count. "I know that we have factory counts running between zero and 18 per liter," he said.

He admitted, however, that the company had recently changed the aluminum tops on its plastic half gallon containers because they did not seal the bottle securely.

"I'm sure you tested one of our old containers. There's no way to tell how long it might have sat on the store shelf. Anyway, now we date the bottles and with the new tops, I think we've got the barn door closed," he added.

Poland Water, Alford explained, comes mainly from a spring in New Jersey. Only a small quantity is produced from a spring in Poland, Maine, where the brand originated. Both springs, he said, are similar in nature.

Warren J. Bradley, a vice president of the Great Bear Spring Company, said his company also takes great pains to see that its water is pure when it leaves the bottling plant.

"This is not to say that somewhere along the way something may not happen. One might have a loose top, or something. And you don't know how long it might have sat on the grocer's shelf."

Although the company takes its name from a spring, Bradley said that some of its water comes from the Philadelphia city water system.

The water is purified further by being passed through a carbon filter and then through a type of resin which removes minerals. Bradley said. It is sterilized by bubbling ozone through it and a slight amount of salt is added to give it some taste, he added.

Who does test bottled water once it leaves the bottled water plant and finds its way to the grocer's shelf?

This question was put to a number of health officials, including Dr. L. W. Schnurrenberger of the D.C. Health Department. Dr. Schnurrenberger said that the District is currently testing one bottle of water but does not test on any regular basis.

"We pretty much leave that up to the federal government," he said.

A spokesman for the U.S. Food and Drug Administration said that it has authority to regulate bottled water shipped in interstate commerce but that there is no program to regularly sample bottled water. "We leave that pretty much to the states," he said.

Spokesmen for the Maryland Health Department and the Virginia Department of Agriculture, which regulates packaged foods, said that they test random samples of bottled water, but none on a regular basis.

Although the Division of Water Hygiene within the U.S. Environmental Protection Agency does not regulate bottled water either, it recently began a study of the industry as the result of a rash of advertising claims by manufacturers of bottled water that imply that local tap water may be unsafe.

John A. Cofrancesco an engineer with the division, said that his office may have inadvertently stimulated the boom in bottled water sales by releasing a study last summer that showed that only 59 percent of 1,000 local water systems tested throughout the nation were meeting federal standards.

Cofrancesco pointed out that the great majority of water works falling below standards were in small towns and that the nation's big cities all checked out well.

"But the bottled water people took great liberties with our study. Whenever we would say potential hazard, they would leave out the word potential. I'm afraid it had a heavy influence on bottled water sales."

The Division of Water Hygiene, noting the response, began to study bottled water regulations. "What it boils down to is that bottled water quality is regulated by the individual states. Some states, including the District, have no regulations," said Erwin Bellack, an engineer and a chemist who works with Confrancesco.

He said that of the surrounding jurisdictions that have specific laws relating to bottled water, only Pennsylvania could be regarded as having an adequate law. Both Maryland and Virginia laws, he said, were relatively weak, spelling out few specific standards.

Bellack said that the federal government is revising its water standards and may some day set a limit on the total number of bacteria because a high bacteria count can be harmful.

"Certain bacteria that are comparatively harmless may not be to an infant or a weakened person, such as an invalid. They could cause a general malaise or feeling of sickness."

"I for one would not drink bottled water because there is no indication that some states enforce these laws. You don't have the certainty, as you do with tap water, that someone has checked it," concluded Bellack.

Despite the fact of certainty about bottled water, some Washingtonians are probably not about to switch back to tap water. Bottled water has found its way into high places.

For instance, Mountain Valley water is served in the Senate dining room, Poland water is served at the Supreme Court and it is rumored that various brands of bottled water are enjoyed at the White House.

For these devotees, there are some prospects for more thorough regulation of what goes into the bottles:

Rep. John S. Monagan, D-Conn., has introduced a bill in Congress to establish strong, specific federal standards for bottled water. He cited the "sudden rapid growth" of the industry, which sold $100 million worth of water last year, as one reason why it should receive constant, uniform regulation.

The State of Maryland is currently conducting a study of bottled water which may lead to tougher standards. John Meadows, chief of the Maryland Health Department's food and milk section, said the study will probably lead to a requirement that manufacturers date the bottles to keep them from sitting too long on store shelves. One of the big problems in his state has been false and misleading advertising, he added.

One company, which was using processed Baltimore city tap water, put labels on its bottles bearing a picture of the Rocky Mountains. "We asked them to change it and then they put on a label with a picture of Niagara Falls," Meadows said.

Even the American Bottled Water Association, the industry's main trade association, is pressing for federal controls. Fred Jones, the association's executive director, said that 90 percent of the nation's bottled water manufacturers belong to his group and abide by its self-imposed, voluntary standards.

"However, there are some fly-by-night operators coming into the business and we would prefer to have the federal government come up with rules that everyone would have to comply with," he added.

Jones said that he hoped the Congress will eventually adopt the association's standards.

One of the association's regulations requires that bottled water not contain more than 100,000 bacteria in a liter. All four companies whose products were tested by The Star are members of his association, Jones said.

"Our water is always superior to the public water supply," Jones maintained. He referred a reporter to Joe. A. Stanley of Lubbock, Texas, who is chairman of the group's water quality standards committee.

Stanley said that while the industry is now striving to attain a "zero plate count" or sterility in its bottles, a high bacteria level would not be necessarily harmful.

"We feel that if it was of any great public health significance, there would be requirements in the area," he concluded.

WE MUST PULL TOGETHER

(Mr. MIZELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MIZELL. Mr. Speaker, at this time I would like to call my colleagues' attention to a very timely and instructive speech delivered by Mr. Archie K. Davis, president of the Chamber of Commerce of the United States, before the 85th annual convention of the Printing Industries of America, Inc., in Chicago, on June 30.

Mr. Davis, chairman of the board of Wachovia, Inc., headquartered in Winston-Salem, N.C., a part of my district, has addressed himself to some very important issues that are of concern to every member of this body and to every American citizen.

His remarks, entitled "We Must Pull Together," make excellent reading, when he speaks of the great progress we have made in the recent past, when he speaks of the growing responsibilities we must bear as a world power, and when he speaks of our recent efforts to reform the welfare system.

I recommend his speech for consideration by my distinguished colleagues, and I include at this time the text of his address in the RECORD of today:

WE MUST PULL TOGETHER

(By Archie K. Davis)

Mr. Chairman, ladies and gentlemen, I am deeply grateful to have been invited to address you today. I do not believe that there is another indivdiual craft known to man that has contributed as much to human progress as yours, nor do I envision a more important one developing in the foreseeable future.

It has been observed that when the controversial prophet of the communications media, Marshall Mcluhan, wanted to announce the demise of the printed word, he wrote a book. I believe that is an eloquent commentary on the continuing importance of printing.

I understand that Ben Franklin is regarded as the father of the American printing industry. Whether or not that is strictly accurate historically, it is certainly symbolically true. Franklin was a small businessman, a tough competitor, and a highly creative, inventive individual—all qualities characteristic of today's printers.

MATTERS OF DEEP CONCERN

But my primary purpose today is not to compliment you, gentlemen. It is to share with you some matters of deep concern to

all of us. These are not easy times for any businessman. Business today is under increasing attack, and I think, in many cases, unfair attack.

The benefits of the private enterprise system are so much a part of the fabric of our lives that we cease to be aware of them; we take them for granted.

It is certainly not difficult to prove the material success of the system. By any standard, we are the most fortunate people in history. We have more wealth in the aggregate, and more wealth on the average, than any other nation. And we are much better off today, in a material sense, than at any time in our own past.

For comparison, may we go back a few years into that past. In the year I have in mind, the death rate exceeded the birth rate. Pneumonia killed more people than cancer. The average hourly wage in manufacturing was 63 cents, and the average weekly pay was $23.8. There were no transistors, no radar, no jet planes, no rockets, no atomic energy, no interstate highways, no frozen foods, no penicillin, and no television.

What year could that have been? 1850? 1900? Well, it was 1939—just 32 years ago. We've come a long way. The average family income in 1970—$9,870—will buy nearly twice as many goods as the average family income as recently as 1950.

We have changed in many other ways since 1950. Your own industry has grown from a 1950 business volume of two-and-a-quarter billion dollars to nearly eight billion dollars in 1970. Our population has increased, too—over 30 percent, from 154 million to more than 200 million. The number of college graduates has nearly doubled, from 432,000 to 772,000 . . . and many more are on the way. And the population has continued to abandon the farm in favor of the urban areas. In 1950, 36 percent of us still lived in rural surroundings. Now, fewer than 27 percent remain in the country. The end of that trend is not yet in sight.

These great population shifts have created difficult problems for all of our institutions, in the midst of our material well-being. Increasingly today, we are being told that "many thinking people believe America has seen its best days." It is said that "never was there more hollowness at heart than at present in the United States."

These sentiments are not new. That first statement was made by the American diarist, James Allen, in 1775. The second, by Walt Whitman, in 1875. We seem to go through recurrent periods of guilt and self-doubt, and we are unquestionably enduring one now.

To the extent that such harsh self-examination spurs us on to greater achievement—in both tangible and intangible forms—it is good. To the extent that it destroys our self-confidence and totally blinds us to our redeeming virtues, it is bad.

Critics who point to specific flaws in the system and urge reform are of inestimable value to our society. I hope we are never without them, and I hope that we will always listen attentively to what they say.

But there is another kind of critic abroad today, one who indicts the system not because it is not trying, but because it is not perfect. And the remedy this kind of critic proposes is not reform, but the destruction of the system.

This kind of criticism is irresponsible in the extreme. It emanates from those who harbor an unshakable prejudice against private enterprise capitalism and representative democracy. They despise the former because it works when they maintain that it can't, and they dislike the latter because it demonstrates public support for the former.

The radicals like to portray all American business as giant in size and monoplistic in outlook. That is a myth. Our large firms must meet increasingly intense world competition. Furthermore, there are over eight million businesses in this country, from General Motors to the corner hot dog vendor, and 95 percent of them are *small* businesses.

The printing industry itself has often been called the "biggest small business in the nation," and that description is a good one. Your industry is one which can still be entered with a relatively modest initial capital investment—the price of a small press and its auxiliary equipment. It is an industry in which a man who starts with very little can become a success, if he is willing to work for it, and I have no doubt that this audience includes many who have done just that.

Success always looks easy—and even undeserved—to those who were not around when it was being earned. That is a regrettable but understandable trait of human nature.

It is perhaps a more curious commentary on human nature that we tend to become most disparaging of our economic system when it is functioning best, and more conscious of its value to use when its heart skips a beat, as it has in the mild recession we are now leaving. About the only good thing I can find to say about such periodic readjustments is that they serve as an unmistakable reminder that economic security cannot be legislated any more than the king can command the tides. Wealth, material wealth, must be produced; that is, it must be earned.

TIME TO SPEAK OF RESPONSIBILITIES

There is a great deal of emphasis today on "rights." I believe it is time to speak of "responsibilities." Responsibility is the glue that holds society together. "Rights" can have meaning only in a social context.

I truly believe that "responsibility begins at home," so in that context, I wish to start with the responsibilities of business in our society.

The "classic" functions of business are to earn an adequate return for the owners, to develop the society's capital resources, to provide the customer with honest value for his money, to pay taxes, and to recompense employees in accord with their contribution.

Few Americans realize the amount of corporate income that goes to employees. In 1970, according to the U.S. Department of Commerce, after deducting overhead, supplies and taxes, 8.9 percent of the country's corporate income went to the owners of the corporations, while 9.1 percent was paid in wages and salaries.

The printing industry alone provides jobs for 335,000 people, and pays them more than $2.5 billion annually in wages and salaries.

Those are the traditional responsibilities. And I am satisfied that our competitive private enterprise system has performed exceptionally well. I might add that I cannot think of a more competitive industry than yours—as anyone who has ever advertised for bids on a printing job finds out quite quickly.

But in fulfilling these classic responsibilities, good businessmen have gone far beyond, into the broad, fertile area where the interests of business and the needs of society overlap. Job training programs, aid to education, cooperation with minority enterprises, participation in community affairs—these are all activities that derive from an enlightened understanding of the relationship between business and society.

The printing industry furnishes some excellent examples of corporate responsibility of a high order. Your extensive job training and retraining programs are outstanding. Many of you are small businessmen, close to the pulse of your communities, and are naturally involved in many aspects of community life.

These are open-ended responsibilities. As businessmen, and as citizens, we can and must do more. The effort to clean up the environment is a particularly great challenge for all of us.

Finally, there is the most obvious social obligation of all—the obligation to seek out and satisfy the needs and wants of the customer.

Business, like society, must constantly evolve and change in response to the changing needs and desires of the people it serves.

There are few industries in America where this critical need for adaptability is more apparent than in your industry, in printing. In the past fifty years you have had to contend with the competition of the electronic entertainment media—first radio, then television. And you have witnessed rapid changes in your own technology. Offset has become the dominant printing method, and phototypesetting is fast supplanting conventional hot type.

Change will never cease.

The message for any business is a simple one: Adapt or die. Eternal vigilance is the price we pay for the freedom to compete.

Business certainly has its share of the responsibility in our society, and it is incumbent upon every businessman to acknowledge that. But we do not lack for critics to point out our failings, either. That is well and good. Constructive criticism is a healthy thing.

However, if criticism is healthy for business, it is also healthy for other important elements of society. And here I believe the critics are failing in their obligation. Business is no longer the dominant institution in our society; at least, not in the sense that the businessman is free to operate pretty much as he chooses. Power today is shared with other groups; therefore, these other groups must also bear a proportionate measure of responsibility.

MAJOR CHANGES AFFECTING US

It is essential that all powerful groups in America recognize this joint responsibility, and realize the absolute necessity for pulling together. The country is facing a different world today than the one we faced 25 years ago. Rapid and very deep changes within and without have created many uncertainties. Success can no longer be taken for granted, as part of the American heritage.

The first of these major changes has taken place outside the borders of the United States. The postwar era of total American industrial and technological supremacy has yielded to an era of intensifying competition.

Other countries have learned to apply our technological and managerial techniques, with the result that our lead has diminished. In some ways, this is beneficial in that it has resulted in a better life for others and it has given our trading partners the means to buy more of our goods. But it also means that we must run faster just to stay even. Our high standard of living depends on our continuing technological superiority.

Another major change to be confronted is that inflation has become a chronic problem with us. Several trends with their roots in the 1930's have contributed to this problem. The first is the rise of the welfare state, the second is the increased power of labor, and the third is our steady progression from a manufacturing to a service economy.

THE SEEDS OF DESTRUCTION

Finally, we Americans have not yet faced the fact that a price must be paid for improvements in the environment and in the quality of life that we are demanding.

We continue to escalate our demands on government with no thought to the cost. Consequently, recent estimates of the federal budget deficit for fiscal 1972 run as high as $30 billion. Even more disturbing, projections of *existing* federal programs to the year 1975 show that these programs alone will require nearly all of the increase in the

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Gross National Product expected by that date. In other words, we have *already* committed to government use all of the extra resources the economy can be expected to generate between now and 1975. None of this economic growth will be available to finance new federal programs, and none of it will be available to the private sector.

And yet, against this background, the House of Representatives has just passed H.R. 1—the so-called "family assistance plan." This bill calls for a guaranteed annual income of $2,400 a year for a family of four to start with, and already forces are at work to increase that allowance to $6,500, which would cover half the population and cost $75 billion a year.

As if that isn't bad enough, the bill also provides for automatic increases in social security benefits based upon increases in the cost of living. By 1980, the proposed social security taxes would be 95 percent greater than those under the present law, and the combined tax of $2,086.80 would represent an increase over this year's tax of 147 percent.

Within this one bill—H.R. 1—is the potential to destroy our private economy as we know it today.

The conclusion is inescapable: We must either reduce our demands of government or accept higher taxes. But so far, we have chosen to postpone the day of reckoning by borrowing from the future to finance our profligate spending in the present. While this technique may buy time, it guarantees a most painful final awakening.

So these three problems—more capable rivals abroad, chronic inflation, and continual deficit financing—are weakening our competitive position in the world and will ultimately threaten our standard of living unless we wake up to reality.

Business must play its part, but business is not alone. *All* segments of our society must work in concert. Those critics who have been particularly hard on business also have a great obligation to point the finger of criticism wherever it needs to be pointed, not just at the same old target.

They have been especially blind to the responsibility of labor.

THE RESPONSIBILITY OF LABOR

Our society owes a great debt to labor. Generally speaking, the American worker is the best in the world. Beyond that, it was the American labor movement which proved that workers in a capitalistic system can create for themselves a far higher standard of living than socialist workers.

But labor is just as subject to human failings as business, government, education, or any other human institution. Labor can become set in its ways and inflexible. Labor can become too greedy. Labor power, like all power, can be misused.

We are today witnessing the ugly spectacle of municipal workers holding the population of New York to ransom. Tomorrow, it could be your community.

Labor can be terrifyingly blind to the fact that the power to compel capitulation to its demands is infinitely greater than are the means to meet those demands. Yet, the unions at times appear willing to kill off an entire industry—to kill off jobs—rather than moderate their position. A "good" contract with a company that is forced to close is hardly an economic victory.

One wonders whether labor realizes that we are no longer living in the 1930's? One wonders whether the critics of business realize it? It should be obvious that labor is no longer an "infant industry," in need of special protection.

The challenges of inflation and foreign competition demand the highest degree of labor responsibility, corporate responsibility and governmental responsibility.

Labor did not bring on inflation. It came as the result of government fiscal irresponsibility and a belief that we could have both guns and buttter without some degree of sacrifice. But labor can easily sabotage efforts to halt it. "Catch-up" wage demands are understandable. However, wage increases that go far beyond that, and consistently exceed productivity gains, merely feed the fires of inflation and leave no one better off, not even the workers who receive them.

The whole process is self-defeating, and the continuing escalation of our wage and price structure is steadily but surely pricing American goods out of world markets, just as surely as wage increases in the construction industry are pricing the average American out of the housing market.

So labor has a vital responsibility to do its share in halting inflation. That means helping to increase productivity by agreeing to the abandonment of featherbedding and other man-made inefficiencies. And it means moderating wage demands to a level consistent with gains in productivity.

I most assuredly do not exempt business from a corresponding responsibility in this area. Just as labor must hold down wage demands, so the businessman must do all in his power to hold down prices. Neither of us is completely innocent. Both of us are equally burdened.

SIREN SONG OF PROTECTIONISM

Foreign competition is and will continue to be an increasing challenge for all of us. To meet this challenge, superior technology and a better-educated, more productive work force are still our high cards in many industries, printing among them. In recent years the value of printed products leaving this country has exceeded the value of imported printed material by more than two-to-one.

But too many of our industries are no longer manufacturing that kind of lead. Some are suffering . . . workers are losing their jobs and investors are losing their savings. This creates human problems that the government cannot ignore.

The answer, however, is not protectionism. If we yield to the siren song of protectionism and run away from the fight, it will be the beginning of the end for the supremacy of the American standard of living.

The AFL–CIO seems to believe that our standard of living is a product of nature—something that we can hoard, like gold, to prevent it from leaving the country. That is wrong, of course, but many businesses and political leaders have also succumbed to the delusion.

The American worker has a high standard of living because he has earned it. He has earned it by being the most productive worker in the world. If he ceases to be the most productive worker in the world, he will also cease to be the most prosperous. And that goes for the rest of us, too.

There is nothing mysterious about foreign trade. It could hardly be more simple. The dollars we pay foreigners for their goods are what they use to buy our goods. If we don't buy from them, we cannot sell to them. If we cannot sell to them, we will have a smaller market. A smaller market means lower levels of production. Lower levels of production mean fewer jobs. Fewer *American* jobs.

The most frequent foreign trade figure we hear is the net import or export surplus. Last year we had a trade surplus of $3.7 billion.

In this age of inflated figures, $3.7 billion does not sound like a significant figure when compared to the total size of our economy. But $3.7 billion is just the *difference* between our imports and exports. We actually exported $42.1 billion worth of goods and services in 1970. Many, many American jobs depend upon the production and transportation of those goods.

One of our major exporting companies—Caterpillar—points out that one third of its American employees owe their jobs to its foreign sales. That's 17,000 jobs in one company alone. Similary, one-third of the supplies that Caterpillar buys in the U.S. alone depend on its overseas business. And so it goes throughout our exporting industries.

So we all have a *lot to lose* if we try to hide from foreign competition. And no one has *more to lose* than the American worker.

GOVERNMENT: PART OF THE TEAM OR PART OF THE PROBLEM?

Government is the last of the institutions that I will mention this morning. Government is traditionally charged with mediating conflict, maintaining order, dispensing justice, guarding the general public interest, and promoting the general economic welfare.

In America in recent times, "promoting the general economic welfare" has been interpreted by some to mean protecting the people from "big business." It is a strategy that may have been appropriate at the turn of the century. Now, there is a greater need to protect the people *and* business from "big government."

It has been said that Japan is more a corporation than a country. That is another way of saying that Japanese business, labor and government cooperate to advance Japanese interests in world markets.

In America, I am afraid the situation is quite the reverse. Labor and management feud, while government actions are frequently inconsistent, and at times even harmful to business.

The regulated industries are a case in point. Federal and state regulatory agencies must begin to recognize their full responsibilities. Too often they consider their sole mission to be the protection of the consumer without recognizing they have an equal responsibility to protect the financial integrity of the regulated industries.

For example, unless such industries have adequate rates of return, they will be unable to attract the funds needed to meet the growing demands of a rapidly expanding economy. Adequate earnings are also essential if regulated industries are to be able to take full advantage of the new technology that will provide a better quality of services in the future.

A closely related need is that regulated industries be given reasonable freedom of operation. Excessive and restrictive regulation and control not only hamper the operation of such businesses, but also prevent them from fully meeting their obligations to both their customers and their shareholders.

Such regulatory behavior is the product of a philosophy born over 35 years ago, to meet the different conditions of a different age. But the times have changed. American business and American labor are competing in a world market now, and there is nothing in the laws of nature or economics that guarantees us a victory. We can no longer afford the luxury of spending half our energy fighting with each other. American superiority is man-made, not God-given. It can be lost.

If we do not learn to shift capital rapidly from inefficient industries to competitive industries; if we do not increase our investment in research and development; if we do not achieve greater productivity in education and government; if we do not learn the techniques of cooperative long-range planning; if we do not accept discipline in fiscal matters, then, one day not too far down the road, we will find ourselves, like Great Britain, living with memories of a glorious past in an inglorious and insecure present.

So government must also become a part of the team, rather than a part of the problem.

But more importantly, government must exercise that *fiscal responsibility* which is necessary to our very survival. Lenin advised

that there is no surer, more subtle means of overturning the existing basis of society than to debauch the currency. He knew what he was talking about.

The sooner labor, management and government recognize our interdependence—the absolute necessity of making this coordinated system of ours work—the greater will be our self-assurance.

Leadership is the indispensable catalyst. Responsible leadership must rise to the occasion. Business as usual, politics as usual, must yield to something a bit more noble in our national character.

The stakes are too high today. As a world leader we must demonstrate a capacity to keep our own house in order—a capacity to exercise self-discipline. We must know where we are going and what our mission is.

IN OPPOSITION TO PROPOSAL TO CITE CBS AND DR. FRANK STANTON FOR CONTEMPT OF CONGRESS

(Mr. BROYHILL of North Carolina asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BROYHILL of North Carolina. Mr. Speaker, the following is a statement of my minority views on the matter involving the recommendations of the Committee on Interstate and Foreign Commerce to cite CBS and Dr. Frank Stanton for contempt of Congress. Thirteen members of the committee have opposed the action and soon each Member of the House will have a chance to consider this important question. I am sure each Member desires to have the benefit of all points of view and because the committee report will not be available for a while, I want to place in the RECORD my dissenting views.

MINORITY VIEWS OF CONGRESSMAN JAMES BROYHILL OF NORTH CAROLINA

We oppose the contempt citation urged by the majority because it sets this Congress on a dangerous course—a course without precedent or justification.

Much of the general criticism leveled against broadcast news reporting these days may be well-founded. Our dissent is not an endorsement of the past conduct of broadcast journalism. In fact, we feel that the physical and technical limitations of the medium and the questionable practices of the past may force Congress at some future date to formulate a more effective national policy in this area to safeguard the public's interest. However, that is not at issue here. Nor are we concerned with any allegation that the Columbia Broadcasting System has engaged in any illegal activity. No such charge has been made in this case.

What we have before us is a narrow question: Should Congress hold in contempt both CBS and its chief executive officer, Dr. Frank Stanton, for refusal to furnish the Committee with the unused television film—the "outtakes"—from its program, "The Selling of the Pentagon." Beyond that looms the broader issue of the power of Congress to exert a different standard of control and supervision over broadcast news reporting than the United States Constitution would permit it to exercise over the general news media in this country. These are interrelated issues and cannot be separated despite the assurances from the Committee that its interest lies only with the narrow issue.

The Committee states that it is operating in good faith within the investigative powers of the Congress to look into the need for legislation in the broadcast news area. It claims further that examination of the outtakes from "The Selling of the Pentagon" is essential to formulating that legislation. In addition, the Committee asserts that the broadcast industry holds a public trust that distinguishes it from the role and duties of the print media. As the public's representative, the Committee also asserts it has the power and obligation to exert strict supervision over the franchise or license it awards broadcasters when they are granted access to the public airwaves.

We do not quarrel with the Committee's good faith, nor with its assertion that Congress must soon formulate a more modern and effective policy that clearly outlines the relationship between the commercial broadcaster, the government which licenses him, and the public interest that must be served. But we feel strongly that if the Congress intends to legislate new broadcasting policies, it does not need the outtakes from "The Selling of the Pentagon" to do so.

Clearly, the Congress would not attempt to draft a national newspaper policy on the basis of a news reporter's outtakes from his notebook after he wrote a controversial story. There is not only explicit Constitutional prohibition, but also a long history of court precedent that forbids prior restraints on how a newsman's judgment is exercised in the formation of a news report. Prying into his notebook after the fact, or setting up formal guidelines prior to publication, goes against the spirit of these guarantees. Abuses that occur in the print media can be and are corrected by libel actions in the courts and by the public pressure for accuracy and truth that can be brought to bear by commercial competition.

Much has been made of the major difference between the print and broadcast news media—the Federal licensing and regulation of broadcasting. The airwaves are a limited resource not open to every citizen, according to this line of argument. And we agree that far. But we dissent from the line of reasoning that follows—that newspapers are to be left unchecked by government because they are a purely private enterprise, and that because broadcasting is a government-licensed privilege, government therefore can and must exert supervision over the content and shape of news.

The point has also been raised that there are precedents in the form of the legislation of some years ago which curbed the abuses of the "quiz show" era, and later of the fairness doctrine which the Federal Communications Commission imposed on broadcasters to assure equal time for the rebuttal of public issues. We approve of both the fairness doctrine and the restrictions on the illegal activities on the commercial programming side of broadcasting. There is indeed ample precedent for those limitations; even newspapers must follow legal standards where their advertisements and other commercial activities are concerned. Moreover, the fairness doctrine affords only a chance for rebuttal; it does not place a prior restraint on the broadcaster's presentation.

But neither the fairness doctrine nor illegality is at issue in the CBS case. News content is. Just as unfettered reporting and presentation of the printed news is forcibly protected by the First Amendment to the U.S. Constitution, so also we feel that this protection must be extended to the electronic media if they are to provide the same essential, and sometimes painful, function of keeping the public involved in and aware of the workings of its society.

Moreover, while there is not yet a sizeable body of court precedent setting out in detail the role of government in its control of news broadcasting, that which does exist firmly links the electronic media to their printed counterpart and to the protections afforded by the Constitution. A contempt citation at this point would certainly be appealed through the entire Federal court system and certainly would find its way to the U.S. Supreme Court where, we believe, a firm decision would undoubtedly be handed down in favor of Dr. Stanton *et al.* In the light of such a decision, we can foresee great difficulty facing the Congress should it set out at a later date to formulate a more detailed broadcast policy.

Men have pondered the problem of how to keep the press both free and responsible since the days of the first broadside sheets of the London coffee houses. The French historian de Tocqueville, who travelled this nation in the early 1800's concluded that the freedoms of the American press probably struck the best balance. The characteristic that impressed him most was the fact that American periodicals were diverse in opinion, owned by many men who competed in giving access to the average citizen to a wide range of opinions and interpretations. The brash and unruly American newspaper of that day offended the aristocratic de Tocqueville, but he conceded that the system worked better than the one in his own country, where a few powerful papers in the major cities determined what the news would be.

In this country we have no NBC or other government-controlled network, yet our broadcasting industry is a powerful and in many ways more concentrated industry than magazines and newspapers. A single newscast often reaches more citizens than the largest circulating newspaper, and the impact can be incredible to behold. So decentralization may be the path that best affords a cure for what ails the broadcast industry. It certainly involves broadcasters, particularly the networks, putting their own houses in order. It probably means a greater standard of responsibility of local station owners to provide a check and balance system against the lapses of the networks.

But whatever standards it chooses to impose on broadcasting, the Congress cannot extend its control to the method by which news is obtained and reported. Nor can it set out on a search of effective remedies that are within the spirit of the First Amendment by first abusing the spirit of that principle in the case of CBS and Dr. Stanton.

NOISE POLLUTION IS NOW RECEIVING RECOGNITION AS ONE OF OUR MAJOR POLLUTANTS

(Mr. TIERNAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. TIERNAN. Mr. Speaker, it has been extremely gratifying to me to see that noise pollution is now receiving the recognition it warrants as one of our major pollutants. The Congress itself is leading the way. The Public Health and Environment Subcommittee, headed by Mr. PAUL ROGERS, has completed hearings on a number of noise abatement bills and should be reporting out a clean bill this week. The Senate Commerce Committee is still holding hearings on this very important question.

Last week Mayor Lindsay proposed a comprehensive noise-control code for New York City. In my opinion, this is the most comprehensive and farsighted city code which has ever been proposed, and I congratulate the mayor for his initiative.

At this point in the RECORD I would like to include an article which appeared in the New York Times outlining the proposed code, and an editorial which

appeared in today's Christian Science Monitor:

[From the New York Times, July 8, 1971]

LINDSAY PROPOSES A NOISE CONTROL CODE

(By Alfonso A. Narvaez)

Mayor Lindsay yesterday proposed a comprehensive noise-control code that would set limits for the first time on many of the major sources of urban noise.

The proposed code, which goes to the City Council for hearings and approval, sets specific noise-level standards in decibels, for construction equipment, air-conditioners, public-address systems, garbage trucks, emergency sirens and other city noises.

The code will not affect some of the major irritants to city dwellers such as aircraft noise, automobiles, motorcycles, subways and commuter railroads. Many of these come under Federal and state regulations and further studies must be made before regulations are proposed for subway and commuter lines.

The code would establish a system of fines of up to $2,000 a day for corporations convicted of violating it. An individual would be liable to be put in jail for up to 30 days for each day of a violation of an order of the Environmental Control Board, created by the code, or a violation of the licensing provisions of the code or if he breaks a noise-regulating seal on any equipment.

The code would also empower the Administrator of the Environmental Protection Administration to place certain types of equipment, which create noise in their operation, on an operating certificate list, with certain standard levels of noise permitted.

The certificate would be granted if the machinery could be operated within tolerable noise levels and could be revoked if the machinery were found to be operated improperly.

The proposed code would also have the administrator designate within two years ambient noise quality zones for the entire city, with noise criteria and standards appropriate to each zone. The zones would have to be approved by the Council.

Individual noise limits would be set for each zone, and proposed land uses within a given zone would have to be in accordance with the ambient noise standards set for that zone.

In the proposed code, ambient noise levels are defined as "the all-encompassing noise associated with a given environment, being a composite of sounds from many sources near and far."

NOISE LEVEL CALLED HIGH

The proposed code states that it is city policy "that every person is entitled to ambient noise levels that are not detrimental to life, health and enjoyment of his property." It also declares that persons who create excessive or unnecessary noises, within the city "are a menace to the public health, comfort, convenience, safety, welfare and the prosperity of the people of the city."

Jerome Kretchmer, head of the Environmental Protection Administration, said that the code "was designed to replace current piecemeal legislation with a body of regulations that will not only apply specific decibel limits wherever feasible, but will also define and maintain general noise standards for geographical areas of the city so that noise pollution can be systematically prevented and abated."

"It has been suggested that New York City may be one of the noisiest cities in the world," Mr. Kretchmer said. "With this code, we hope to lose that distinction."

Mr. Kretchmer added that current noise legislation was ineffective because noise levels were not defined and no enforcement machinery was provided.

In a statement accompanying the proposed code, the Mayor urged the Council to have "New York City take the lead in the problem of reducing noise."

"The problem of noise affects the way we live and work," the Mayor said. "Strong legislation, which leads to action by both the public and private sectors, is a vital step toward preserving the health and comfort of all New Yorkers."

The 48-page code was prepared by the City's Bureau of Noise Abatement and the Environmental Protection Administration following a study of the noise problem in the city from 1968 to 1970 by the Mayor's Task Force on Noise Control.

Mr. Kretchmer spoke to newsmen outside City Hall as he stood next to a yellow noise-monitoring van bearing the lettering "Noise Makes You Nervous and Nasty." He said that the proposed code would require that garbage trucks built after Dec. 31, 1972, be operated at a noise level no louder than a vacuum cleaner and that sirens make no noise louder than midtown traffic.

The code continues present prohibitions against unnecessary noise but adds specific decibel limits on the operation of existing air compressors and sets lower decibel levels for equipment manufactured after Dec. 31, 1971. The decibel levels for existing air compressors would be set at 90 dba (decible measurements on a weighted "A" scale, which places more emphasis on highpitched tones, to which the human ear is more sensitive). By December of the following year, allowable levels would be 83 dbA's and by 1974 they would be 75 dbA's. New compressors would have to be about five decibels quieter.

Similar procedures would be set up for air-conditioning equipment, sirens, horns, pavement-breakers and refuse compacting trucks. In addition, burglar alarms on businesses and private dwellings would have to have automatic devices that would shut off the alarms after 15 minutes.

Jet engine noise and noise from other aircraft would not be affected by the code because the Federal Aviation Administration regulates these. Noise from motor vehicles comes under regulations of the state, which has preempted such legislation and forbids the passage of local laws inconsistent with or duplicating existing state limits.

Technicians on the noise monitoring van of the Bureau of Noise Abatement said that the noisiest area in the city that they had monitored was in the vicinity of 46th Street and the Avenue of the Americas, where construction is under way and six air compressors raised a din at a level of 100 dba's, just below the level that would inflict pain, but much higher than the level that could cause physical injury if a person were subjected to the noise continuously.

[From the Christian Science Monitor, July 12, 1971]

A RIGHT TO QUIET

Noise has crept into the daily life of industrialized man like crabgrass in a suburban lawn. At first unnoticed because it blends into the ambient sounds of constructive, useful activities, suddenly it reveals itself as an ugly, alien and destructive intruder.

Militant citizen groups, such as Citizens for a Quieter City, in New York, have been most useful. But even their good work has been held back by the twin facts of an apathetic public that has simply become used to putting up with noise, and a resistant group of vested interests who fight any controls that may cost them out of pocket.

But persistance has paid in the long run, and meaningful action is being taken at both city and federal levels. Debate over the administration's proposed Noise Control Act of 1971 is giving congressmen a first-hand look at the quantity and damaging effects of noise. A parade of scientists has provided a Senate Commerce subcommittee with evidence that noise causes malaise of body and mind. In the home, says Prof. Jack C. Westman of the University of Wisconsin, recent studies showed that unwanted sound contributes to "the gradual erosion of family life."

Congress should give fullest support to the President's bill, which would authorize the Environmental Protection Agency to set federal noise standards for transportation vehicles, machinery, appliances, and other manufactured products sold interstate. At the same time, the administration is resisting proposed amendments to its bill which would require strict federal noise-control standards within one year on some products. The Congress should stick to its guns, within the limits of economic feasibility.

At a lower governmental level, it is heartening to find New York City considering a strict noise-control code. Anyone who has run the gauntlet of six or eight air compressors roaring in strident unison along a Sixth Avenue construction site, knows the shattering impact noises can have on defenseless citizens.

Garbage trucks, air conditioners, motorcycles, sirens, pavement breakers, and other existing paraphernalia of the cityscape would all come under strict decibel limitations in the proposed New York City code, with even lower limits placed on newly manufactured equipment.

What the federal government and New York City are doing must be emulated by states and other cities across the country, until citizens can once again hear themselves think. This will cost Americans a good deal of money, but the resultant peace of mind will be worth every penny.

DROUGHT NEEDS DETAILED

(Mr. PICKLE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PICKLE. Mr. Speaker, last week I introduced three bills to aid drought-stricken farmers and ranchers now and in the future. I called on the Congress to act speedily on these bills, as they will affect each one of our constituencies sooner or later—as the drought will affect each one of us sooner or later.

I said:

The drought now centers in the Southwest, but each of us here with a rural constituency knows that his time will come—his time to be faced with major farm disasters and only piles of red tape to scatter over decimated fields. And each of us here with urban constituencies need only watch the price of meat, of corn, of cotton goods, of bread, even of bread—to know that his time is coming too when his people back home will feel the drought dipping into their own pocketbooks.

We need a drought aid program which will work, which will really help the farmer. And we need one now. The absence of rain in our Southwestern States carries with it not the slightest shred of humor, even of dry humor. It is a serious matter, deadly serious.

In an effort to get a good hold on just what the situation looks like and on what we can do about it, I polled each of my county ASCS agents and County FHA officers. In addition I have spent several days in the last few months going out to talk with numerous farmers and ranchers in my district first hand. And I have met with others in my district office.

I now have in hand written reports

from my county and state officials detailing the picture for my own district. And the picture is bleak.

In Bastrop County, my State and local people report crops of all kinds, except peanuts, have been severely damaged Yields will be light even if a good rain comes.

In Blanco County, the picture is a little brighter—but only if there is rain soon.

In Burleson County, they still hope to get a crop if they get rain, but even so, dryland crops will be much below normal yield.

In Caldwell County, they are now hoping for a 15-percent cotton crop—if they can get rain. There is no grain crop.

In Colorado County, they expect about a 25-percent crop although some rice and row crops may fair a little better.

In Fayette County, they expect about a 25-percent crop, and they are short of stock water.

In Jackson County, approximately 90 percent of the county has very poor crops. Many farmers are now planting in hopes of making a late crop—but they will need rain to do so.

In Hays County they are looking for 15 percent of their normal grain crop, 40 percent of the cotton crop—if they get rain—and 25 percent of the hay crop.

In Lee County they are getting 30 percent of their grain crop, and they are baling that for hay, because hay is even more scarce than grain. Predictions are there will be hardly any corn. Milo and peanuts stand a better chance—but, again, only if there is rain.

In Travis, we find one of the worst situations of all. Estimates run that we will get less than 10 percent of the crop there, unless rain comes soon. And even if it does, it is believed the maize crop is lost anyway.

Wharton County has a variable picture due to isolated recent rains, although pastures and hay crops have suffered all over. Wharton is an exceptional situation this year.

Williamson County still hopes for up to 40 percent of their cotton crop, but, as in Travis, the maize crop is believed lost

The picture, I would wager, runs about the same, or in some instances perhaps worse, for my Southwest colleagues.

We need help. That ought to be crystal clear.

The local offices of ASCS and FHA in my district have done a magnificent job of extending what aid they can. But they are also among the first of those who are warning me how much more aid will be needed.

FHA officials, county and State, tell me that 46 emergency FHA loans are now operating in my district through May 31, 1971, and the great influx of loan requests is still to come. It will come this fall. It will come then because only then will the farmers know for sure how badly they are hurt. Some even then will have to wait for rain before they can apply because they cannot begin to replace their herds until rain brings new grass and until sufficient feed is available. Also many are hanging on to the last thread of hope before going further into debt.

Mr. Speaker, when these farmers come to us for aid, they will need it. They will not be looking for an easy handout. When they come they will be on the fall line. And I sincerely hope we will not dally in getting the loan funds to them that they will so desperately need. I know my county people will do their best. I just hope we here in Washington make sure sufficient funds are available.

Mr. Speaker, looking over tallies prepared for me by county ASCS agents in my district, I can see that use of the set-aside and CAP land grazing programs are fairly widespread. But I must remind the Congress that, as the county by county breakdown shows, many of these lands offer precious little to graze upon.

Use of the emergency feed and grain and feed transportation programs, however, are not so widespread. I asked why.

Some pointed out that in certain areas the farmers had little storage facilities for the extra grain. Others pointed out that some farmers did not have enough money to buy the grain even at reduced prices. And several pointed out that the price reductions did not really amount to all that much considering that, at least to some extent, the farmers would not have been buying the grain at all in a normal year. They would have been using their own pastures. But the report I got back most frequently was the necessity to file a statement which has come to be known as the "pauper's oath," signifying that the farmer is on the bedrock of his finances before he can ask the Government for feed price help.

Mr. Speaker, my county people fully realize and have told me that many farmers are having to buy feed they would never buy in ordinary seasons. Again and again, I hear repeated the opinion that all a man ought to have to prove in order to qualify for help with feed and grain is that he is a bona fide farmer or rancher and that he has livestock and that a drought has hit him. My ASCS committees know their areas. They know these men. They say that they can tell when a man needs hay, and I believe them.

Emergency grazing and haying are not offered on a financial hardship basis. Emergency conservation practices are not offered on a financial hardship basis. Why should emergency feed and grain be offered on such a basis? When a man's business is damaged or destroyed by flood, tornado, or hurricane, we do not ask how much money he has in the bank, we ask how much he needs to get going again. Why should we change colors here?

Perhaps we ought to set some guidelines, but financial destitution need not be the only guide. One person suggested that the aid be available to whoever derived a certain percentage of his income from his farming or ranching operations. Many more said that those eligible should simply be a farmer or a rancher, a bona fide livestock producer. One man suggested that the Congress could set a limit on assistance per year, as in other agriculture programs, and then open the feed and grain assistance to all bases.

But whatever we do, we must do something soon.

I think that the Agriculture Department is slowly realizing just how much our Southwestern farmers and ranchers do need help. I think in the next few days that they may well remove the "pauper's oath." I hope they do, and I hope they remove it permanently. I have introduced a bill to make its elimination permanent. As I have said above, almost every one of my county men listed this oath as a prime hangup in the current drought relief programs. They have already moved to take sensible and practical decisions in this area. I think we should back them up fully. They are there. They know what the needs are.

I think in the next few days the USDA may move as well on another recommendation which has been coming up to me from my district people and on which I have also acted with legislation. That is the need to adjust a cotton producer's support payment history on up to 100 percent of a drought year, instead of the current 80 percent. I hope the USDA does take this step, although I also hope that in the future it will be a matter of law. That is why I introduced my bill. It will simply be doing the same thing as this hoped-for USDA action, but without all the redtape that is currently bogging us down.

And I think we should go further. I have introduced legislation by which the Secretary of Agriculture may declare an area as a drought emergency area upon a request from the Governor of the affected State. The Governor may file this request whenever total precipitation for at least 3 of the last 6 months has been less than one-half normal, as determined by the Environmental Science Services Administration, or whenever he determines that the need for credit in the area is due to a drought.

The Secretary may then move with full force and speed to combat the drought. And he may extend the forgiveness clause on FHA loans to cover all losses due to a major disaster or due to a drought to the extent that these losses are not compensated for by insurance or other means. This will help to cover the now "hidden" expenses of a drought pointed out to me by my county agriculture officials—expenses such as extra costs in fertilizer, land preparation, and planting seed.

Mr. Speaker, may I say again that we need help. May I say again that sooner or later this drought, or other disasters like it, will affect each and every one of us here. May I urge speedy action on a drought aid program that will offer real recovery help.

WORLD TRADE AND THE UNITED STATES

(Mr. FISHER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. FISHER. Mr. Speaker, I have recently had an opportunity to read some papers on the position of the United States in world competitive trade. We have recently had occasion to be increasingly concerned over the trend, which shows this country enjoying a falling share of world exports during the past decade.

O. R. Strackbein, who is president of the Nation-Wide Committee on Import-Export Policy, has prepared three papers on the subject in recent months. The first was "Disturbing New Elements of Import Competition"; the second, "Eclipse of U.S. World Productive and Competitive Leadership," and the third, "Our Labor-Intensive Industries: Let's Preserve Them Against Imports."

There is considerable overlap in these papers, but this is helpful toward developing the point made in the papers. Mr. Strackbein traces the development of the American industrial leadership of the world and how this leadership has been eroded, leaving us exposed to impact competition under conditions that leave us at a great disadvantage and in fact rob us of the very processes by which we reached world leadership.

I hope that every Member will take the trouble to read these papers for an enlightened view of where we stand in the world of trade today.

I include Mr. Strackbein's three papers at this point in the RECORD:

DISTURBING NEW DIMENSIONS OF IMPORTS

(By O. R. Strackbein, President, The Nation-Wide Committee on Import-Export Policy, May 17, 1971)

In recent years imports have put on a new face in our economy. They represent a newly developed challenge in a sense that can only be described as spoliative of certain aspects of the American system of industrial expansion.

In order to grasp the full implications of this pronouncement it is desirable to give attention to the function of wage levels and relative productivity in the course of import competition, and their bearing on domestic employment under general and special circumstances.

Industries that are beset by growing imports will not ordinarily add workers to their employment rolls, unless the economy is very prosperous and upgrade. They will rather do all they can to increase productivity by reducing their employment in order to meet the pressing low-cost import competition. It becomes necessary to reduce costs, and this can be done in any meaningful sense only by cutting down on the work-force. Since wages cannot be reduced, both because of political realities and because doing so would reduce consumer demand, the only way to reduce labor costs is to cut the number of man-hours needed to produce a given volume of goods. When that is done by a number of industries that are faced with import competition, the result will be less employment. This may mean a lower total payroll. In any event that is the objective.

REDUCTION OF PRODUCTION COSTS

It is not generally appreciated what is involved in reducing production costs. It is often said that in some products labor is not more than 15% or 20% of the cost of production, e.g., as in automobiles, in the production of which the payroll in 1967 was only 14.8% of the value of shipments. (See Census of Manufactures for 1967). This judgment is perniciously false because it ignores the permeation of all production by labor, from minerals, agriculture, lumbering and all other raw material preparations to multiple transportaion, financing, insuring, storing, etc. These and other operations precede final assemblage of parts and components. What is called the "automobile industry", with its 1967 complement of 743,000 workers, is merely an assembly operation. The great preponderance of labor is expended before the assembly line is reached. The "industry's" labor outlay is only a third of the iceberg. Instead of 743,000 workers, somewhat over 2 million workers are needed to build our automobiles and parts.

The fact is that close to 80% of total costs incurred by all corporations in production goes into employee compensation carried all the way back. Therefore precious little maneuvering is left as a competitive weapon other than reduction of man-hours through worker-displacement. If overall costs are to be reduced as much as 10% in order to become competitive with imports the total work-force from A to Z must be reduced by something more than 10%, even if profits were reduced proportionately. If a 20% reduction in cost is necessary the work-force would have to be cut some 25%.

Reduction of costs has, of course, been the very matrix of American industrial success. Lower prices generally beget greater consumption. While this is not always true it is true with a product that enjoys an elastic demand, such as automobiles. It does not hold for goods with an inelastic demand, such as sugar and salt and other essentials. With an elastic demand consumption rises when prices are reduced. The classic American process with a new product which was found to enjoy an elastic demand has been to move heaven and earth to bring down the price to consumers. That is the tale of the automobile, radio, TV, etc. It is also the very principle on which our anti-monopoly posture rests.

LOW-COST IMPORTS PRODUCE DIFFERENCE EFFECT

As a result, today *imports* are invested willy-nilly by the unwary with the same virtues attributable to the cost-reductions that in our economy were the key to enlarged consumption and resulting expansion of employment. The analogy rests on precarious ground. For example, the demand for a particular product may be inelastic. Lower costs and lower prices, whether offered by imports or domestic producers, will then not enhance consumption sufficiently to help employment. Those who were laid off because of higher domestic productivity or imports then create net unemployment.

Now we come to the very core of the case. If the demand for a product is elastic and if the initial price to the consumer is appreciable a lowering of the price will indeed beget consumer response. The workers who were displaced by the more productive methods that resulted in the lower price will find employment after some time. The workers in the buggy and carriage factories gave way in a roundabout process to the automotive worker. In time more workers were employed in automobile production than had been displaced, although not very likely in the same place.

However, to substitute lower-cost imports for domestic cost-reducing innovations, such as more productive machinery, is not justified. There is a fertile difference.

When the domestic entrepreneur contemplates drastic cost reduction as a means of reaching a broader market he is lured by visions of bonanza-like returns. The great exemplar, of course, was Henry Ford. He collected handsomely in his vision by taking a risk on the elasticity of demand for his product. He was sure, however, that if his theory was true, he would have a vast and almost virgin market before him.

He had recognized the interdependence of mass-production and mass-consumption. He instituted the unheard-of $5-a-day wage as a token of his faith.

EXAMPLE OF THE AUTOMOBILE

To appreciate the difference between the Ford approach and the present-day efforts of manufacturers of products that promise great consumer acceptance if the cost is brought to levels low enough to tap the mass market, we must recognize the difference in the attendant circumstances. Mr. Ford could be sure that he would not soon be undersold by competitors who had access to his technology, access to his engineering developments and who were likely as experienced in marketing as he but who paid their workers only $1 or $2 per day against his $5.

Had such entrepreneurs been on the landscape and ready for him, ready to invade his market and tap layers of consumer income below those he could hope to reach unless he could surprise them with yet more highly productive methods, he might have thought twice before venturing so far afield. The others would have shared his market and might possibly have driven him out of business. Their lower wage disbursements would, however, soon have failed to boost consumer income sufficiently to produce the generally high level of consumer demand necessary to sustain general expansion of the economy. Instead of taking their cue from Henry Ford the remainder of American industry would have seen him as a failure and would not have emulated him.

The industrial miracle of the world, the American industrial system, would not have flowered, unless, indeed, some other entrepreneur equal to Ford had come on the scene.

To pursue the difference further, assume that his competitors, who were in a position to take a competitive advantage of him because of their lower wages combined with high productivity, had been foreign companies producing abroad rather than American. They would then have employed foreign rather than American workers. Mr. Ford could never have built his industrial empire. The automotive industry would hardly have become the great employer of domestic labor that it is today.

Today highly resourceful, competent and energetic entrepreneurs, supported by great capital resources, much of it American, do exist and operate abroad; and these are hungry for business.

This fact alters the whole outlook for greater employment in this country today compared with what it would be if the conditions faced by Henry Ford still prevailed.

EXAMPLE OF RADIO AND TV SETS

We have an example, even if not a perfect one, in that part of the electronic industry that is devoted to consumer electronic goods today. This potential employer of thousands upon thousands of workers has been hamstrung, so to speak, as an expansive employer of American workers. Its employing potential has been dissipated by the very import process pictured above.

It is not that the demand for household electronic goods (radio and TV receiving sets, tape recorders, etc.) is inelastic. No! It is quite elastic, and the American industry benefited from this fact for years in the radio forerunner of TV. Manufacture of receiving sets, the price of which had been brought down within the reach of the mass market, provided expanding employment. With the advent of TV and the development of mass production abroad the scene began to switch.

The high wages which were the characteristic of the American system, together with their function of assuring an adequate market for mass-produced goods, suddenly became a formidable competitive handicap. This handicap was two-fold. The lower foreign costs permitted inundation of our market by the imported product. At the same time it foreclosed to the American manufacturers the hope of enjoying the mass market that formerly was sure to greet the further progressive reduction of costs. The latter function was pre-empted by the foreign producers, in order to accomplish this fact, needed no particular inventiveness or originality. They had but to build on what became available to them through the process of licensing from American patentholders.

Thus was destroyed the dream that in its pursuit in the past by American entrepreneurs brought us ever expanding employment opportunities. True, American capital, because of its mobility can still participate in the expansion, but the benefits do not accrue to the American workers.

In the past we looked to new industries, which came to be known as growth industries, to take up the slack of industries that lagged in employment. A recent example was the chemical industry with new products. This was a natural development when the new and growing industries were operating in this country and enjoyed exclusive patent rights and tariff protection. Today it is different. We still have growth industries but our own companies license foreign producers or establish producing plants in other countries.

The lower costs of production abroad produce the same effects that successive production-cost-reductions formerly produced in this country.

When the source of the cheaper product, however, is foreign our domestic industry is left in a relatively stagnating position. Our workers see the growth that previously resulted in burgeoning employment at home, taking place in other countries.

Thus the whole outlook for greater employment is changed. A shift to overseas bases has in recent years been going on all about us. We can no longer reason as we did before. When our capital can move overseas so readily the accustomed door to greater employment in this country to which we looked in the past is largely shut off.

EXPORTS AS AN OFFSET

It is said that employment generated by exports offsets the jobs lost to imports. Exports, however, cannot overcome the growth-killing effects of imports that rob our growth industries of their dynamic employment potentials, as described above: e.g., man-made fibers. This is something that was not on the scene until the past decade; and it has already taken a heavy toll. We have before us the bright example of computer exports.

In 1960 we exported only $48 million of electronic computers, accessories and parts. By 1969 this figure had climbed to $728 million. This heartening record is equaled, however, by our importation of telecommunication apparatus (radio, TV, etc.) which moved from $127 million in 1960 to $1,006 million in 1969. Here we have evidence of the rapidity of import invasion if the competitive cost-advantage of the imported product is right. The evidence is very convincing in persuading us that industries that do not yet feel much pressure from imports may find themselves beleagured in a few years' time.

Even so well-established an industry as the automobile makers, who were among the very pioneers of the mass-production system, found that there was still a market to be found in the income brackets that lie below the lowest-cost automobiles our industry was able to manufacture.

If we scan the income distribution by family in this country in a recent year (1968) we may better appreciate what the potential market may be today. 39.7% of family income in 1968 resided in the $10,000 and over brackets. 23.4% fell into the $7,000–$9,999 bracket. Below that level only a low-price automobile, new or secondhand, could hope to make headway. Yet, 26.6% of the total income fell into the $3,000–$6,999 bracket. (Statistical Abstract of the United States, 1970, Table 486, p. 322).

Here was an invitation to any automobile manufacturers who could produce a vehicle at a price low enough to tap this market. Those more likely to have that capacity would, however, be foreign producers who enjoyed the competitive benefit of low wage rates and high productivity. The result was the capture in a few years of 10%-15% of the total American automobile market by imports.

American producers were prevented by labor costs and the productivity level from supplying this potential market. They are making a second attempt, but imports continue to grow. Unless rising productivity can reduce sharply the man-hours needed to produce cheaper automobiles, the imported product will continue to supply the greater part of the low-priced car market. As previously noted, a substantial productivity increase translates into heavy worker-displacement. Already some components are being imported in order to assure a low price. This practice, however, does not help domestic employment.

THE AMERICAN DILEMMA

This is essentially the dilemma in which American industry finds herself today *vis-a-vis* imports. The pressure to remain or to become competitive with imports, as if success in this endeavor would restore the magic of old, works at cross-purpose with the national goal of full employment. The sharper the import competition the more hopeless the effort to increase employment through cost reduction. Movement to overseas bases will be stimulated.

IMPORT CEILINGS OR QUOTAS AS A REMEDY

Any proposed remedy must therefore address itself to this dilemma. To retain a reasonable share of our market for domestically-produced goods calls for import controls that are designed to produce precisely that result. The tariff has been reduced to ineffective levels in most instances. Import ceilings or quotas represent the most effective as well as the most reasonable instrument available for prevention of the pre-emption and despoliation of our market by imports running wild. Ceiling or quota limitations can be devised to provide for a reasonable level of imports and sharing of our market in proportion to its expansion from year to year. They would at the same time control the shipment to this country of products manufactured abroad from plants established by American capital.

Our industries would once more be assured of a growing market and higher employment if they were guarded against disruption by imports.

There can be little question that our patent system contributed greatly to the vision of successive cost reductions as the key to the mass production and the mass market which together brought greater employment. When imports are poised ready to jump ahead of our producers because of the cost advantage enjoyed by the former, our producers face a disheartening if not impossible prospect; and our economy will lose the propulsive lure that formerly induced it to work production miracles. Labor will be the evicted bystander.

ECLIPSE OF U.S. WORLD PRODUCTIVE AND COMPETITIVE LEADERSHIP

(By O. R. Strackbein, president, the Nation-Wide Committee on Import-Export Policy, June 14, 1971)

This will be an attempt in a very abridged form to trace the recent make-over of the American economy in terms of its competitive capacity in relation to the rest of the world.

In order to find an anchor-point it will be necessary to go back a generation or two. No specific date can be fixed but it is desirable to go back far enough to trace the divergence of our economy from its previous state and particularly from that of other countries, or to about 1900.

The old idea governing wage income was based partially on the iron theory of wages of Ricardo and others. The principal thrust was to get as much labor for as little pay as possible. Wage reductions were imposed as a remedy when business went sour in depressions. In other words, wages were an evil burden on production. Labor could be and was sweated on "sound" economic principle. Legislation and judicial decisions underwrote the practice by keeping unionization under wraps.

NEW CONCEPT TAKES SHAPE IN THE UNITED STATES

After the concept of *mass-production* took hold as a result of mechanical inventiveness in this country, a ray of light of a different wave length broke through. Perhaps the first concrete progeny of this beam of light was the anti-trust laws, in the sense that they reflected the economic meaning of competition versus monopoly power. At the bottom of this distinction lay the interest of the consumer or the people. Competition would bring prices down. Monopoly was bad because it placed pricing in the hands of the monopolists whoever these might be and made of it an instrument of enrichment at the expense of the people.

With this concept the seedbed was ready for another new idea. If mechanical genius was sufficient to speed the wheels of production and swell the streams of goods, the process left to itself was doomed to choke itself on a vast accumulation of products that had nowhere to go.

EXAMPLE OF THE AUTOMOBILE

Folklore has it that Henry Ford was the genius who broke the dilemma. His reasoning seems simple enough; but it was revolutionary if seen as a radical departure from the old wage theory. He saw the need of consumer purchasing power and wages as the life-saver of mass-production. He instituted the $5 per day wage, unheard of at the time. His vision, however, had a yet deeper perception.

Consumer income was not then, as it is not now, all of the same level. How many consumers enjoyed incomes of $25,000 or more?—a tidy sum in Ford's early days. Not very many. If the cost of an automobile was such that only the wealthy could buy it, there was no point in making a great many automobiles. They would only pile up as inventory. The cost per unit would remain high because of low volume of production.

It was obvious, however, that the cost of the automobile could be reduced substantially—how far down no one knew—if overhead were spread over thousands of cars rather than hundreds and as production methods were improved. More yet could be done if hundreds of thousands of cars could be built; but would people buy them?

If the wealthier elements were buying cars because they liked them, would not the next lower layer of income level also buy them if the cost could be brought within their range? Obviously, the question of chicken or egg sequence faced Mr. Ford. He was allergic to bankers but made the plunge on the strength of his faith in his vision. He sensed that the demand for automobiles was elastic. The farther down he could bring the cost the larger the demand he would encounter. The more cars he produced, the lower would be the cost of each. He could now visualize the bonanza that awaited him if he kept the faith. If there were a hundred who could buy at car at a price of $5,000 and a thousand who could pay $4,000, and a hundred thousand who would pay $3,000, there might be a million who could buy a car at $500.

Mr. Ford operated on this principle and met with phenomenal success. His was the epic of the marriage of mass-production and mass-consumption. He, together with others who saw the same vision, gave to the world the uniquely American system of production and distribution.

The system was not fully understood, as it may not yet be fully understood, but it was viable, albeit there was danger that it might be run into the ground. Indeed a historic crash did occur in 1929. It was only in the next decade that the birthpangs of the twin equation of mass-production-mass-consumption, with much travail, achieved a parturition or actual delivery.

The old idea of wages as a monstrous if necessary evil was nevertheless not easily fended off. It was ready to strangle the newborn idea; but yet the offspring lived and before long was a lusty challenger of the old concept; and in time won the day—some would say, in spades.

The American productive system as epit-

omized by the automobile brought industrial leadership of the world to the United States. After World War II the other industrial countries were convinced of the virtues of the system as a producer of goods and they fell in line in full cry.

With the help of the Marshall Plan, the infusion of copious capital, and the exposure of thousands of foreign productivity teams to our plants and factories, followed by billions of dollars of private investments abroad by our industries, the other industrial countries moved apace in modern technology and managerial skills. Their productivity, formerly far below that of our industries, was soon hard on our heels, in a few instances perhaps forging ahead. In some notable instances foreign industries such as steel and textiles in Japan, installed modern machinery and equipment virtually from the ground up, industry-wide, while our industries were saturated with machinery ranging from the obsolete, the obsolescent to the modern. This represented a competitive handicap for us.

OTHER INDUSTRIES

The example of the automobile did not long remain unique if it ever had that distinction. The principle of cost and price reduction as a means of reaching a mass market succeeded handsomely in other industries that made products for which the demand was elastic. An inelastic demand such as we encounter in many essentials, such as salt and sugar, where consumption is limited by the number of stomachs to be fed, does not lend itself to the type of growth and proliferation that supports great industrial expansion.

Demand for the nonessentials, on the other hand, answers to the old concept of the "indefinite expansibility of human wants." It is in this field that American production has found its widest expansion and intensification. Examples: several cars in a family, multiple radio and TV sets, twenty pairs of shoes in milady's closet.

The "expansibility" of human wants depended for its realization on rising income, such as we have witnessed in this country as it made its way to affluency. Potential consumers could become actual consumers, and the proliferation of nonessential goods became characteristic of our economy of abundance, also one of waste and obsolescence. Such an economy becomes distinctly more sensitive than one that caters only to essentials and little more.

The American economy today is still ahead of other nations in consumer goods. Per capita production and consumption had been phenomenal in comparison with the rest of the world, other than Canada, *but the gap is narrowing*. The technological development of other countries and adoption of our mass-production system poses a threat to us that is yet to be fully perceived or appreciated.

CHANGED COMPETITIVE WORLD

The other countries have indeed adopted our mass-production system, but while their wages have risen—in many instances more than ours in percentage terms, though not in dollars and cents—they continue to lag far behind us (Canada excepted). Their consumers are unable to buy all their mass-produced goods. Therefore they need foreign markets, far beyond our needs, to dispose of their surplus. This country offers the most attractive market, and in 1970 we took $40 billion in goods from other countries. An increase in wages abroad would lessen present dependency on exports. Our economic relations with other countries as represented by trade have changed in a basic sense because of the wage discrepancy. There was a time when the wage discrepancy was less crucial. Our higher productivity acted as a considerable offset. Today that offset is shrinking and in some instances has been lost; and there is another challenge, as we shall see.

The transformation of our competitive standing *vis a vis* the industrially advanced nations can best be appreciated if we place Henry Ford and his vision and endeavors in his day in the present world milieu.

This tour of imagination requires that other industrial countries had been abreast of Mr. Ford in point of automotive technology—i.e., they could in a short time have produced as good an automobile as Mr. Ford. We assume further that his competitors had perceived the meaning of cost-reduction as a means of tapping a broader market, as described herein. At the same time their wages were a half or less of those paid by him. The duty on automobiles, let us say, was 5% if they were imported into this country.

Now, as Mr. Ford, struggled to bring his cost down, so that he could offer his automobile to the public at $1,000, thus hoping to open a wider market, his competitors could have offered this product at, say, $750 or $800! They could also have beaten him to the $500 level.

The envisioned bonanza that became his when he had the market to himself would have evaporated. He could perhaps in those days have reduced his wages sufficiently to contest his foreign competitors' conquest of his market but this step would have violated and subverted his very vision of increasing consumer purchasing power.

Had he been confronted fifty-odd years ago with very low-cost imports he might have opened branch plants abroad to reach into the pools of low-wage labor and exported his product to this country and to other markets from abroad. He might also have licensed foreign producers to produce his car; but whatever recourse he might have had Detroit would not have become the automobile capital of the world. The vast employment offered by the automobile industry over the years in this country would have been much smaller. The swelling payrolls of the manufacturers of automobiles, of raw materials and parts and components would not have fertilized the economy, as they did, with gold dust. Our economy would have moved ahead at a distinctly more pedestrian pace.

Add to the automobile industry numerous other rich examples of industries that prospered and proliferated under the American productive system, and the results would have been very different. Had these many other industries also sought to make their way, not under the conditions that actually prevailed at that time but under conditions such as they would have been had the present-day competitive situation, including the advanced state of foreign technology and the lower wages accompanying it, been substituted for the actual one, all would have been different. The American system would not have become so sharply differentiated during the decades of 1910–1950 from its counterparts in other parts of the world.

International costs of production would have remained on a much more uniform level. In other words, the differences in cost levels throughout the industrial world would have been comparable to the differences within the confines of this country or as they are within the borders of Europe itself. These differences would have been bridgeable, and free trade would have been a much more feasible undertaking, even as it has recently been found to be within the European Economic Community and in the European Free Trade Association.

UNTENABLE ANALOGIES

However, to seek to equate the discrepancy between American costs and foreign costs with the cost differences within the country and thus to minimize the disruption caused by virtually unimpeded imports into this country today, is to overlook the function of comparative dimensions. We have free trade in this country and shifts have taken place in industrial locations (indeed not without some distress, as with the migration South of the textile industry); and Europe is able to come together in areas of free trade, but that is not the same as exposing the high production-cost levels of this country to those of other countries that are armed with our technology, but not with our high wages. Nothing is gained by confusing the two; much is obscured. Had we started on the same level with other countries, and had the American system been accepted abroad and thrived there, including the concept of high consumer purchasing power as a function of high wages, or had we not adopted our system at all, we would have been close enough together in competitive levels to embark on free trade along with the EEC and EFTA.

We are, however, farther from that condition today than formerly. With productivity no longer so far apart, and narrowing, but with chasms dividing our wage levels from those of our foreign competitors it is unrealistic to equate our internal competitive diversity with that existing between us and our foreign competitors.

The competitive discrepancy between this country and the rest of the world in a vast array of products has produced precisely the troublous problems that confront us today. We do ourselves no good by minimizing the problem. But for this gaping discrepancy we would not for example, have witnessed the virtual loss of the consumer electronic industry to other countries. We would not now be witnessing the rising threat from synthetic textile imports. We would not see the helplessness of our automobile industry in its efforts to compete against German and Japanese "mini cars", produced at costs we cannot match despite our technology. We would not have witnessed the virtual vanishing of the American-flag merchant marine—down to carrying only 5% of our total imports and exports. As for radio we did indeed for some years enjoy the same fruits of cost-reduction as we did earlier with the automobile. The product was one for which the potential demand was very high, as well as elastic. We needed only to bring the cost and the price down sufficiently to tap the mass market. This was done without benefit of import competition, as it was also done earlier with the automobile. Our technology and business acumen in both instances succeeded in tapping the mass market. We did not need imports as a monitor. Again, much employment was added to the economy by the radio industry.

Then came television, first black and white and then the color version. Before our technology had gone all the way, even with the black and white, foreign sets challenged our progress toward saturation of the market. We were headed off at the pass, so to speak. Sets could be made more cheaply abroad. Our companies then invested abroad and, of course, hired foreign workers rather than American. They licensed foreign manufacturers for a fee, and our economy lost the usual value of patents as generators of jobs in this country. Even the manufacture of radio sets rushed overseas. It was possible to produce sets more cheaply abroad and thus to tap yet lower levels of consumer income in this country and to exploit the market for multiple sets. Once more the increasing employment that formerly would have been ours was lost.

DISTINCTION BETWEEN DOMESTIC AND FOREIGN COMPETITION

There exist in superabundance those who insist that domestic and foreign competition exert the same benign influences that bring down costs to consumers. As already noted, we needed no import competition to bring down the cost of automobiles or radios; nor for that matter, to bring down the cost of telephone use. This is not to say that import competition has no effect on prices. If, however, it enjoys too sharp an advantage, the effect on domestic production and employment can be not only erosive but lethal. We have but to reflect on what has happened, not

only to consumer radio and television products, but turn our gaze on the sewing machine, watches, typewriters, binoculars, athletic goods, glassware, pottery, tile, footwear, specialty steel, fish and fishery products, some fruits and vegetables, if we wish to behold cripples and wrecks of what were once flourishing industries in this country and healthy employers of labor. There are others; and yet others are waiting in line.

To equate domestic inventions and innovations as disrupters and displacers of labor with the effects of imports is to be hopelessly hobbled by college-implanted mental rigidities over which reality has little hope of prevailing. Workers displaced by technology within this country have always had the hope that the ensuing lower prices would stimulate consumption (assuming an elastic demand) sufficiently to lead in time to higher employment. Not so when imports produce the displacement. The higher employment occurs in other countries, not here. Indeed, investment in our own industries is discouraged.

Moreover, when promising new industries in this country might be expected, as earlier in this century, to open new fields of plentiful employment, face the present-day situation, including instant licensing of foreign production, they would not prosper, but would make a halting beginning and then wither on the vine. They would see their potential market opened to imports to reap the rich harvest that previously was their own. There is then no hope that "in time" new jobs will proliferate over the American landscape.

NEW DIMENSIONS OF THE IMPORT PROBLEM

The deterioration of our trade balance in the last decade reflects the results of the developments that have been described. From 1958 through 1970 our share of world exports of manufactured goods has shrunk from 27.7% to 21.3%, or by 30%. While we still enjoy an export surplus in a few items (such as machinery and chemicals) this surplus has been narrowing ominously. The high-volume of our machinery exports has, however, virtually destroyed our hope of reaping the benefits of new or "sophisticated" product development. The lead we have in computers, and other "high-technology" products, for example, must be regarded as temporary. In nearly all other product lines we are in a deficit position. Employment in these extensive deficit lines exceeds that of the handful of industries in which we still enjoy a surplus, by over 2 million. These deficits did not result from a sudden onset of inefficiency in this country, as is so frequently implied, but from the transformation herein described.

There are those who take great but unjustifiable comfort from the sizable excess of our returns on foreign investments over current annual capital outflows. This should be no cause for elation since it only measures the competitive advantage available to our capital in the lower wage refuges abroad. The dividends received cannot begin to offset the employment and wage outlays that our economy did not enjoy because of the changed conditions. They merely help to conceal the true competitive disasters we face—through no fault, it may be said, of the industries concerned.

If we can no longer, as it is, count on the growth that follows cost-reduction through higher technology because imports can beat us in efforts to tap mass consumer income, we must seek means of restoring the conditions that will assure us the fruits of technological progress.

CONCLUSION

The cost-chasm that separates us from our competitors is deep-seated and structural in nature and will not yield to diplomatic negotiations. The stubborn persistence of the differences is rooted in national economic policies, imposed on industry in the form of controls that are quite inflexible. As a result international competitive forces that might be expected to narrow the cost-gaps are quite thoroughly frustrated, with no end in sight.

The only effective remedy lies in setting ceilings over imports. By holding imports to a reasonable share of our market while permitting their growth as our market grows, nothing is disrupted. New industries and old could then once more look forward to enjoyment of the fruits of their cost-reduction accomplishments. Otherwise our domestic investment climate will not attract, as it did in the past, the infusion of capital needed for growth and higher employment.

We cannot hope under present conditions to achieve full employment except possibly under some unforeseen abnormal conditions. Our market is one of the most open in the world. The few import quotas we have on non-farm products are noted chiefly for their liberality. This liberality allows the imports of those few products that are under quota restrictions to loom larger than they would be if the quotas were really restrictive. By being liberal we are made to look illiberal.

The American competitive position in the world has changed basically and radically, but not irreversibly. We must adapt or pay the price in loss of employment and real national income. We must not allow ourselves to become as dependent as was colonial Great Britain, on dividends earned abroad.

OUR "LABOR-INTENSIVE" INDUSTRIES: LET'S PRESERVE THEM AGAINST IMPORTS

(By O. R. Strackbein, president of the Nationwide Committee on Import-Export Policy, July 9, 1971)

What the WORDS Mean

When American industry and agriculture complain over the inroads of imports in the domestic market they are told to divert their capital from "labor-intensive" industries into "capital-intensive" ones or, alternatively, they are admonished to become more efficient where they are. Neither suggestion gives evidence of penetrating thought.

What, we may ask, is a "labor-intensive industry", and what a "capital-intensive" industry? Simply put, any industry that depends more on hand operations than on machine operations would be relatively labor-intensive. When cigars were hand-filled and hand-rolled the operation could be called labor-intensive. When automatic machines replaced the handwork, or nearly all of it, the industry became relatively capital-intensive.

Labor-intensive industries are usually regarded as "inefficient" because of their low output per man-hour. "Inefficiency" does not, in this usage necessarily mean poor management, wasteful methods or indolence, nepotism or the like. Indeed, hand operations may be performed with great skill, dexterity and speed and still be regarded as inefficient—in the economic sense. A coal miner using pick and shovel might work with great energy, application and speed but he would still be woefully inefficient compared with a modern coal digging behemoth. The latter might do the work of a dozen or score of men or more, depending on its size, power, etc. It is therefore much more efficient than the man with pick and shovel.

A blinding error is committed, however, when we approach the question of relative competitive standing of labor-intensive and capital-intensive industries.

All industries are labor-intensive.—Except under monopolistic or semi-monopolistic conditions, employee compensation represents some 80% of the cost of production. In 1968 corporate business (including mutual financing institutions) received an income of $403 billion. Of this amount $318 billion represented employee compensation, or 79%. (See Statistical Abstract of the U.S., 1970, Table 479, p. 316).

Obviously, not all corporations are capital-intensive. However, the notion that capital-intensive industries enjoy a lower total labor cost *in terms of percentage of the value of the finished product* than do the labor-intensive industries is a delusion. The error arises from calculations commonly made from statistical tables that show industrial classifications, such as "Motor Vehicles and Equipment", "Blast Furnace and Basic Steel Products", etc. which set forth the number of employees, payroll, the value added by manufacturing and the value of shipments. The source of the statistics is the Bureau of Census, U.S. Census of Manufactures. (See Statistical Abstract of the U.S., 1970, Table 1119, p. 700–704).

THE TERM "INDUSTRY" MAL-DEFINED

Unfortunately for a more accurate account of the relation of employee compensation to value of shipments, these Census industrial classifications nearly always reflect only the last stage of production. The automobile industry, i.e., "Motor Vehicles and Equipment", as represented by the 4 manufacturers (General Motors, Ford, Chrysler and American Motors) is only a small part of the productive operations that in the aggregate combine to produce an automobile. The value of shipments of the "industry" in 1967 was $40.3 billion. The number of employees was 743,000; the payroll, $5.9 billion. In other words, the payroll came to only 14.8% of the total value of shipments!

Therefore the automobile industry is called "capital-intensive" or "labor-sparse"—a veritable caricature.

It must be clear that much, very much, labor had already been expended before the assembly operation performed by the automobile companies had even begun. The iron ore was mined, shipped and smelted. The proportionate outlay for employee compensation in the mines, in the warehouses, for transportation, for financing, for insurance, taxes, etc. must be accumulated as cost of the steel that was incorporated into the automobile. The same applies to copper, glass, paint, aluminum, rubber, industrial chemicals and water consumed, and all else that became a part of the finished product.

If this were done, not only in the case of the motor vehicle industry but in all other industrial classifications made by the Bureau of the Census, a wholly different picture of labor and capital intensiveness would result.

Even in the "steel industry" the payroll (1967) of $5.0 billion was expended to produce steel shipments valued at $22 billion, or only 22.7% of the value of the product. Again, the defect in this statistic is that the steel industry is much more than the steel mills. "Value added" by these mills was $10.1 billion. The payroll was 50% of this added value. The payroll, however, still leaves out overhead in great part.

Altogether all that is not profit, taxes or interest, in the cost of the final product has been expended as employee compensation at some stage in the productive process. Even taxes in considerable part go into employee compensation of federal, state or local governmental workers. Insurance and financial costs (interest) also bear their share of employee compensation.

Preponderance of Employee Compensation in Costs

So it may be said that employee compensation is the vastly dominant part of cost of production and also in moving the goods into the hands of consumers through wholesaling, advertising and retailing. *Labor-intensiveness is therefore characteristic of all production and distribution.* To repeat, there is no such operation as a labor sparse one, in terms of share of total costs measured against final price, outside of monopoly conditions.

It was long bruited over the land and especially in the colleges of economics that our "capital-intensive" industries were our heaviest exporters and also least vulnerable to imports; and so they were for a time, for obvious reasons. During the past decade, however, the facts of our new competitive situation in the world have demolished this claim. The automobile industry, the electronics industry, the typewriter, sewing machine, steel and meat-packing industries have learned in recent years that capital-intensiveness has not shielded them against the impact of import competition, for reasons that by now must be obvious: technological diffusion.

SCAPEGOAT ECONOMICS

There was a vastly receptive intellectual market in this country a generation ago for the economic theories that upheld free trade, especially in the universities. With the onset of the Great Depression in *1929* the economically frustrated public became so eager for a scapegoat that it was possible to saddle the *subsequent* passage of the Hawley-Smoot Tariff in *1930* with a causative function in the generation of the Depression, which burst upon us seven months earlier in the stock market crash. The scapegoat lived and thrived for thirty years—a phenomenon of longevity for the quadruped.

Now in the rubble and shambles, recognizable as the fruits of our long-term trade policy launched in mid-thirties, we should look for the more probable causes of our present unenviable situation in the world of competition—something other than Messrs. Hawley and Smoot.

HISTORICAL ROOTS AND PERSPECTIVE

Before the advent of the Twentieth Century the economy of this country so far as production is concerned was much the same as that found in Europe. The attitude toward wages was also little different. However, in the post Civil War years in this country the base for a considerable divergence was taking shape. "Big business" was coming on the scene. Trusts were being formed.

To their credit professional economists saw the dangers of monopoly power. Their insight paved the way for the Sherman Anti-Trust law of 1890. Implicit in this section was recognition of the value of free competition as a price regulator. Monopolies were regarded as evil because they made possible the maintenance of high prices and the harboring of inefficient methods of production.

As the native inventive genius led to revolutionary discoveries that in turn paved the way to mass production we came to the threshold of the great departure from the European system of production and distribution.

MASS PRODUCTION AND MASS CONSUMPTION

After mass production became possible and in some instances an actuality the way was open to a reassessment of the accepted attitude toward wages. The European attitude toward wages, as exemplified by the British economists, notably Ricardo, began to loom as an obstacle to mass production. Wages had been regarded as an evil, albeit a necessary one. They were kept down while the hours of work were kept long by anti-union legislation and judicial fiat. The theorists served the business needs of the times.

But where was mass-production to go (1) if monopolistic practices would prevent prices from being reduced in order to reach more consumers, and (2) if consumers lacked sufficient means to buy all the vast volumes of goods that could be produced even if prices were reduced by competition? Who, in any event, were the consumers? Were they principally the property owners, business proprietors and professional people? A little reflection would show the fallacy of such thinking. The most numerous consumers were the workers in factories and mines, on farms, in forests and fisheries: but how much purchasing power did they have?

THE FUNCTION OF WAGES IN CONVERTING WORKERS INTO CUSTOMERS

Henry Ford saw the connection and one day he raised the wages of his workers to $5 per day, a virtually unheard of level in his day. There was potential magic in the concept, but the vision grew slowly. Yet it was not discarded. The automotive industry, particularly Ford, also perceived the rich ore that could be mined if the theory of the elasticity of demand were worked for what it was worth. On reflection it could easily be seen that if an automobile could not be sold for less than $1500 or $2,000 dollars (equivalent to perhaps to $7500 to $12,000 today) only the top layer of income of the country would be tapped.

If the cost could be reduced to $1,000 while at the same time consumer income were increased, a richer market would become available; and much better if the price could be reduced to $500. This is to say, it became clear that the demand for automobiles was such that if a satisfactory product could be offered at lower prices, sales volume could be increased handsomely. That was "elasticity" of demand. However, which came first, the chicken or the egg? There was only one way to find out and Henry Ford did it. He plunged, without aid of the banks, and, appreciating the economics of big scale operation, he was able to bring down the price by the simple process of building many more cars and, luckily, selling them. Soon there was no longer any doubt, that the equation of mass production backed by mass consumption was equal to a vast fortune in manufacturing.

EFFECT OF THE GREAT DEPRESSION

It was, however, not until the Great Depression struck and efforts were made to reconstitute the purchasing power, that the general attitude toward wages began to change. Legislative approval was given to obligatory collective bargaining; and minimum wages and maximum hours of work were established. The struggle was long and sometimes bitter, but in the end the equation was sustained.

The American productive economy was now different from the European and even more so from the Japanese. Wage reduction was no longer to be regarded as an acceptable means of becoming or remaining competitive.

The vast productive power of the United States proved itself during World War II; and before many years the other noncommunist industrial countries elected to adopt our system of mass production. They did not, however, so readily accept the second half of the formula, and purchasing power lagged behind output of goods, thus producing pressure for exports.

Meantime the American economic system was brought under a multitude of governmental controls, as were also the economies of the other Western countries and Japan. Free enterprise was left little scope for competitive maneuvering, since nearly all the factors of production came under rigid control. While wages in this country were not controlled as such, the collective bargaining power of labor in the United States became such that wage reductions became as rare as the bald eagle and nearing extinction. Social welfare programs also came to rest on industry as rising costs, added to the already high costs of national defense.

FORSAKING LAISSEZ FAIRE

Thus while the old *laissez-faire* economy was being fragmented and in fact all but discarded on the domestic front we embarked in the opposite direction with respect to international trade. With a fanfare suitable to the coronation of divine kings and queens the reduction of trade barriers was launched and carried on in a worshipful procession of tariff-cutting from conference to conference for thirty years. We all but dismantled our tariff on the ground that our higher technological attainments could meet the worst that the rest of the world could offer us in competition based on low wages. Cordell Hull, the reputed father of the "Reciprocal" Trade Program was all but sainted. Peace would reign over the world and the goodwill that would attend free trade would surely lead us into the promised land.

We reduced our tariff some 80% in its protective effect, bringing it down from an average of a little over 50% to a level of some 10%. Beyond that from 35–40% of our imports are free of duty.

EFFECT ON IMPORTS

Imports began to climb after European and Japanese recovery was completed, accompanied, as it was, by great technological leaps. Our foreign buying veered from raw materials and unmanufactured foodstuffs toward finished goods and semi-manufactures. The share of our imports or the mix responded to the advantage of importing more goods that incorporated fully the cheaper foreign wages. Where 1956–60 equals 100 the imports of finished manufactures rose to 474 by 1969 while the imports of crude materials rose to only 133 and the imports of crude foodstuffs to only 111. After all the raw materials incorporated only one stage of production and therefore only one dose of cheap labor while the finished goods incorporated the full succession of stages of manufacturing, thus making a better bargain.

With the exception of a narrow band of products we now import more than we export. The narrow band is composed principally of machinery, including industrial machinery, aircraft, computers, office machinery, automobiles, etc.; and chemicals. In these goods, except automobiles, we still enjoy a large surplus, but the deficit incurred in nearly all other products has overcome the surplus enjoyed by the narrow band. The deficit would be appreciably worse if we should strip our exports of goods shipped under Foreign Aid, Food for Peace, etc., and worse yet if we should value our imports on what they cost us rather than their cost at the foreign point of shipment. Instead of a surplus of several billion dollars annually we would have shown a sizeable deficit. In 1970, instead of a surplus of $2.7 billion ($42.7 billion in exports against $40.0 billion in imports) we would have had a deficit of a similar magnitude.

Unfortunately for our overall *trade balance* (as distinguished from the *balance of payments* which includes numerous nonmerchandise items such as tourist expenditures, foreign investments, dividends from abroad, military outlays abroad, etc.)—unfortunately, to repeat, the surplus in our machinery exports is declining. This surplus was, indeed, stimulated in no small degree in the first place by our heavy investments abroad in plants that we equipped in great part with our machinery. As these plants have come into production they have in some instances reduced our foreign market for the very products they make and sell in the markets where they are located and in third countries.

WHERE WE STAND TODAY

We are now in effect meeting our unique system coming back to us competitively—our system, that is, with one of the two elements of the equation missing, which is, to repeat, the higher wages that would boost the foreign purchasing power sufficiently to reduce excessive dependence on exports. These countries look to us to provide the market they themselves do not create at home.

In this confrontation lies the seeds of our economic undoing. Because of the rigidities created by planned economies throughout the world, including rates of exchange, competition has not succeeded in equalizing unit costs of production across national boundaries. The great trade liberalization program, with all its slashing of tariff rates has been all but irrelevant. Other measures

replaced free competitive forces. While the latter would have produced an equilibrium of costs, if left to work their effects, they have been put in a bottle there to smoke in frustration.

The result has been the creation of countries standing on different competitive levels, the United States the most disadvantaged of all, with merely segmental exceptions that may be regarded as temporary.

How different this world today from the accustomed one of the past generation or two!

The automobile was not alone in demonstrating the richness of the mass market for nonessential but useful and pleasureable goods, if only that market could be tapped successfully. The telephone, household appliances (refrigerators, washing machines, dishwashers, vacuum cleaners), radio and television, typewriters, cameras, notions and novelties, phonographs and records—everything that might enjoy a potential mass demand, was eligible for production on a large scale if the cost could be brought down to the progressively lower levels of income where the millions of prospective consumers resided.

The welter of new products, not really essential but catering to comfort, pride, pleassure and convenience, *produced under our patent system*, had the fullness of time in which improvements could be made and the tempo of manufacture speeded by new devices and ingenious labor-saving installations such as could be thought up and perfected. From relatively high initial costs the price could in a matter of years be brought within reach of the mass market. No import competition was needed to accomplish this objective. In most instances, indeed, import competition was nil. The incentive was the high sales volume assured if the mass market could be tapped. Therefore, all the drive was centered on that accomplishment.

In the train of this multifaceted development economic growth went apace. Employment, which would have lagged had it depended on the production of only staples and essential goods, expanded hand-in-hand with the expansion of industries built around the new products.

Changed Competitive World

The world has changed in many fields, as we read daily, but in few more so than in our industrial outlook and expansion of employment.

No longer is it possible today to repeat what was the classic way in this country during the heyday of our technological superiority. Today our industries, holders of patents, soon license foreign producers or build plants in foreign countries to manufacture the kind of new products on which we formerly depended to absorb the oncoming army of new workers who reached the labor market annually.

New products or established products that might be made still cheaper by technological innovations, do not today offer us the hope of hiring tens and hundreds of thousand new workers. We are headed off at the pass by the foreign products made under the same patent or process but saturated with low-wage labor. In any contest to reach the lower layers of consumer income as a yet broader market for even well established products, such as the automobile, the imports can get there first with lower prices and spoil the market before our very eyes.

A CALL FOR GREATER EFFICIENCY

Bewildered economists call for greater efficiency. The steel industry is stagnant! The textile industry is "labor-intensive" as if that were a sin. Let the imports in: They will drive us to greater efficiency! Editorialists, saturated with wisdom, and speaking with the force of Relevation, take up the cry. Do not harbor inefficiency! There is magic in free trade, they imply, never bothering to point to an example of it anywhere in the real world. Let foreign bottoms carry all our trade import and export. Even now we carry only 5% of our trade in American-flag ships! We get things cheaper that way! Concentrate our resources in "high-technology" (read capital-intensive) industry. Let imports drive our labor-intensive industries to the wall!

It seems evident that these cries can arise only because the premises have not been examined with proper care. In the first place, there are few manufacturing industries in which the domestic producers are not more efficient than their foreign competitors, if we measure efficiency by output per man-hour. Moreover we have not historically relied on imports for our efficiency-motivation. It was self-generated as described above. It would continue to be so motivated in the future if, contrary to fact, the same conditions as in the past should prevail.

It goes without further emphasis that the greater productive efficiency so insistently called for, can, in any meaningful sense, be achieved only by reducing the man-hours needed to produce paritcular goods. If a 20% cost reduction is needed to meet import competition some 25% of the workers must be displaced—not only in the final stage of production, as in automobile *assembly plants*, but all the way back, not only to ore mines and the attendant transportation and other auxiliary services, but to all other raw materials and attendant services.

The coal industry serves as a classical example of the price of enhanced efficiency as a means of avoiding extinction. Its very life was threatened twenty years ago, by diesel oil, residual fuel oil and natural gas. Under the death sentence the industry worked to overcome its handicap of excessive man-hours per ton of coal. From 1950 to 1965 the industry's efforts were crowned with success. Productivity was increased threefold. It became competitive with the rival fuels and in world markets.

The price, however, is one that could not be paid by many industries without producing national economic disaster. Over two-thirds of the mine workers were displaced by machinery. Over 300,000 miners lost their jobs. The problem of rehabilitation of Appalachia is still with us. It has already cost hundreds of millions of dollars, and has left with us a landscape of strip-mining that is giving grave concern to ecologists and environmentalists.

Should the steel industry reduce its costs in a like manner a disaster of a much greater magnitude would be visited upon us and a yet greater one if the textile industry followed suit. Scores of other industries, though smaller, are also pressed, some of them more grievously than textiles and steel.

THE SHIFT FROM LABOR-INTENSIVE TO CAPITAL INTENSIVE INDUSTRIES

Despite the economic misnomer of this manner of classification of industries so far as competitive differentiation is concerned, it may be enlightening to pursue the proposal of a shift away from the "labor-intensive" industries to its logical conclusion.

We have a number of industries that are not highly mechanized. If we relinquish them to imports we face higher unemployment unless we find places for the displaced workers in the high-technology of "capital-intensive" industries, such as computer manufacturing, television and radio, aircraft and automobile plants, synthetic rubber factories, machinery manufacturing, steel mills, man-made fiber plants (which now supply more of our fiber needs than does cotton), glass bottles, office machinery, camera manufacturing plants, etc.

Which one of these, we may ask, is open for expanded employment? Several of them already face severe import troubles of their own. We find few advertisements for greater man-power in the classified advertising sections of newspapers. In any event, the avant garde industries in point of automation and technology are striving with might and main to increase productivity, which is too say, reduce the number of their payroll. They are not eager to accept coal-miners or pottery workers who have themselves been evicted by machines or by imports. The harder these industries are pressed by imports the greater the need to reduce employment as a means of *remaining competitive*. They will not be in the market for more workers.

It must be true then, after all, that imports do indeed create pressure for greater efficiency! Therefore they are an antidote to inflation!

This is a jumped-to conclusion often reached but suffers from the defects of many such conclusions.

Import competition is of a different species from the domestic variety, particularly under the present posture of American industry before the world. We needed no import competition to bring down the cost of radio sets. The demand was elastic, and as we increased the output per man-hour and reduced the price a lively consumer response led to more production, more cost reduction and more employment in this country. Had imports had the drop on us so far as costs go, because of much lower wages, they, and not the domestic industry, would have tapped the mass market, and the increased employment would have taken place abroad rather than in this country. This is now happening not only with respect to radio sets but TV sets and other electronic goods. So, even our frontrunners are being gunned down by imports!

Moreover, under the earlier conditions our new industries made cost reductions when they were ready and the time was propitious. Their hands were not forced on the instant, as they are by imports, regardless of their financial readiness or the unreadiness of improved models.

Therefore while import competition may indeed create pressure for greater efficiency, the character of the pressure is disruptive and not conducive to the benefits to which our industries were accustomed in the characteristic race for the mass market. When imports create unemployment no collateral growth is stimulated in this country as it was when, for example, the automobile ousted the buggy, leading to broader employment. If greater unemployment is to be avoided other industries are called on to absorb more than their share of total employment.

From 1960 to 1970 our labor force grew from 72.1 million to 85.9 million, or 19%. (Stat. Abs., 1970, Table 317, p. 214 and Current Survey of Business April 1971). During the same period total *manufacturing employment* rose from 16.79 millions to 19.39 million or 15.4%, *or 19% less than the increase in the labor force.*

Between them the manufacture of *Textile Mill Products, Blast Furnace and Basic Steel Products, Footwear, Except Rubber, Stone, Clay and Glass Products, Meat Products,* and *Petroleum Refining,* fell short by 407,000 workers of keeping abreast of the increase in the labor force from 1960–69 or 1970. These industries were all beneficiaries of import restrictions. Yet their displacement of workers was not sufficient to achieve competitiveness. Had they displaced 2½ to 3 million workers they might have recaptured their competitive position. By contrast employment in government, Federal, State and local, increased 46 percent from 1960–69. or by 3,874,000 workers! Their wages and salaries fell on industry in the form of additional costs of production.

The notion that we can relinquish our so-called "labor-intensive" industries to imports, among which the textile industry is usually listed, without suffering economic collapse, is false. We need employment-breeders, not displacers. We should preserve these industries as sources of much-needed employment. They are as efficient as any in the world but pay wages that buttress our consumer purchasing power. They should not be forced too rapidly toward automation, lest we breed more Appalachias. More-

over, other countries can automate too, and outpace us once more.

If we neutralize imports by placing a ceiling over them which could be raised annually in proportion to the expansion of the domestic market, we would bring back the classic conditions of economic growth in this country. If we continue an open-market policy without ceilings, *we will reverse the process* that brought this country to world industrial leadership. This will not be good for us nor for the remainder of the world, short-run or long-run.

CONCLUSION

By imposition of ceilings, backstopped, if necessary, by import quotas, the erosion of our production base would be halted, whether or not the imports into this country were generated abroad by American patents. The latter practice will, in any case, soon be outgrown by foreign producers, thanks to their catch-up with our technology. They will have worthy patents of their own.

The final notion that the reduction or removal of foreign nontariff barriers against imports would greatly stimulate our exports must also be dispelled. Until foreign wages in relation to productivity reach our level we will not find many outlets abroad for our goods, except temporarily.

So long as we continue our course of a planned economy in a world of controlled economies and therefore of disparate competitive levels, while maintaining an open market for imports our economy will be outflanked by imports. Any notion of full employment in peacetime under such circumstances may also be dismissed.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. VAN DEERLIN, for 3 weeks, on account of overseas travel.

Mr. ZWACH (at the request of Mr. ARENDS), for today and tomorrow, on account of the death of his mother.

Mr. DAVIS of South Carolina (at the request of Mr. BOGGS), for today on account of official business.

Mr. PEPPER (at the request of of Mr. BOGGS), for Monday, July 12, through Friday, July 23, on account of official business.

Mr. WILLIAM D. FORD (at the request of Mr. BOGGS), for today and Tuesday, July 13, on account of official business.

Mr. MATSUNAGA (at the request of Mr. BOGGS), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DU PONT) and to revise and extend their remarks and include extraneous matter:)

Mr. KEMP, for 5 minutes, today.

Mr. MILLER of Ohio, for 10 minutes, today.

(The following Members (at the request of Mr. MITCHELL) and to revise and extend their remarks and include extraneous matter:)

Mr. MITCHELL, for 10 minutes, today.

Mr. FLOOD, for 10 minutes, today.

Mr. REUSS, for 15 minutes, today.

Mr. BURKE of Massachusetts, for 10 minutes, today.

Mr. GONZALEZ, for 10 minutes, today.

Mr. STAGGERS, today, for 15 minutes, to revise and extend his remarks and to include extraneous material.

(The following Members (at the request of Mr. CAMP), to revise and extend their remarks and include extraneous matter:)

Mr. HALPERN, for 5 minutes, today.

Mr. MORSE, for 5 minutes, today.

Mr. CRANE, for 5 minutes, today.

(The following Member (at the request of Mr. JAMES V. STANTON), to revise and extend his remarks and include extraneous matter:)

Mr. FOLEY, for 10 minutes, today

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. RARICK, the remarks made during his 1 minute speech today and that they appear in the Extensions of Remarks, today.

Mr. GRAY in two instances and to include extraneous matter.

Mr. MICHEL and to include extraneous matter.

(The following Members (at the request of Mr. DU PONT) and to include extraneous matter:)

Mr. HASTINGS.
Mr. GUBSER.
Mr. WYATT.
Mr. HALL.
Mr. SCHMITZ in three instances.
Mr. KEMP.
Mr. THOMPSON of Georgia in two instances.
Mr. WHITEHURST.
Mr. SCHWENGEL in four instances.
Mr. DUNCAN.
Mr. HOSMER in three instances.
Mr. BLACKBURN.
Mr. DEL CLAWSON.
Mr. MCCLORY.
Mr. MILLER of Ohio.
Mr. HILLIS.

(The following Members (at the request of Mr. MITCHELL) and to include extraneous matter:)

Mr. MAHON in four instances.
Mr. ABOUREZK in five instances.
Mr. ROSENTHAL in five instances.
Mr. FISHER in three instances.
Mr. JACOBS.
Mr. HARRINGTON.
Mr. HAMILTON in two instances.
Mr. ROYBAL in 10 instances.
Mr. EDWARDS of California in two instances.
Mr. BOGGS.
Mr. RARICK in three instances.
Mr. CELLER.
Mr. FRASER in three instances.
Mr. HÉBERT.
Mr. GONZALEZ in two instances.
Mr. RYAN in three instances.
Mr. RONCALIO in three instances.

(The following Members (at the request of Mr. CAMP) and to include extraneous material:)

Mr. ARCHER.
Mr. CHAMBERLAIN.
Mr. DENNIS in two instances.
Mr. DICKINSON in three instances.
Mr. HALPERN.
Mr. WHALEN.
Mr. MCCLURE.
Mr. LATTA.
Mr. REID of New York.
Mr. DELLENBACK.

(The following Members (at the request of Mr. JAMES V. STANTON) and to include extraneous material:)

Mr. ANDERSON of California in three instances.
Mr. DULSKI in six instances.
Mr. HATHAWAY.
Mr. MAHON.
Mr. O'HARA in two instances.
Mr. CLARK in two instances.
Mr. PICKLE in two instances.
Mr. MOORHEAD in two instances.
Mr. PUCINSKI in six instances.
Mr. DOW.
Mr. BEGICH in two instances.
Mr. HUNGATE in two instances.
Mr. MILLS of Arkansas in two instances.
Mr. HARRINGTON in two instances.
Mr. MAZZOLI in two instances.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1828. An act to amend the Public Health Service Act so as to establish a Conquest of Cancer Agency in order to conquer cancer at the earliest possible date; to the Committee on Interstate and Foreign Commerce.

ADJOURNMENT

Mr. JAMES V. STANTON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 5 minutes p.m.) the House adjourned until tomorrow, Tuesday, July 13, 1971, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

954. A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting a report of procurement from small and other business firms, July 1970 to April 1971, pursuant to section 10(d) of the Small Business Act, as amended; to the Committee on Banking and Currency.

955. A letter from the Assistant Secretary of State for Congressional Relations, transmitting a copy of Presidential Determination No. 71–17, concerning the ceiling on the aggregate of the total amount of certain assistance to African countries imposed by section 33(b) of the Foreign Military Sales Act, as amended, pursuant to section 33(c) of the act; to the Committee on Foreign Affairs.

RECEIVED FROM THE COMPTROLLER GENERAL

956. A letter from the Comptroller General of the United States, transmitting a list of reports of the General Accounting Office issued or released in June 1971, pursuant to section 234 of the Legislative Reorganization Act of 1970; to the Committee on Government Operations.

957. A letter from the Comptroller General of the United States, transmitting a report on an assessment of the Teacher Corps program at the University of Southern California and participating schools in Los Angeles and Riverside Counties, Office of Education, Department of Health, Education, and Welfare; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk

for printing and reference to the proper calendar, as follows:

Mr. BLATNIK: Committee on Public Works. H.R. 4354. A bill to amend section 127 of title 23 of the United States Code relating to vehicle width limitations on the Interstate System in order to increase such limitations for motorbuses; with an amendment (Rept. No. 92–345). Referred to the Committee of the Whole House on the State of the Union.

Mr. GARMATZ: Committee on Merchant Marine and Fisheries. S. 699. An act to require a radiotelephone on certain specified vessels while navigating upon specified waters of the United States (Rept. No. 92–346). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. MAYNE: Committee on the Judiciary. H.R. 2706. A bill for the relief of Miguelito Ybut Benedicto; with an amendment (Rept. No. 92–342). Referred to the Committee of the Whole House.

Mr. HOGAN: Committee on the Judiciary. H.R. 2814. A bill for the relief of Rea Republica Ramos; with an amendment (Rept. No. 92–343). Referred to the Committee of the Whole House.

Mr. RODINO: Committee on the Judiciary. H.R. 5181. A bill for the relief of Rene Paulo Rohden-Sobrinho; with an amendment (Rept. No. 92–344). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BARING:

H.R. 9702. A bill to declare that certain public lands are held in trust by the United States for the Summit Lake Paiute Tribe, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. GAYDOS:

H.R. 9703. A bill to provide for orderly trade in iron, iron ore, and steel products; to the Committee on Ways and Means.

By Mr. GUDE:

H.R. 9704. A bill relating to the Federal payment for the District of Columbia; to the Committee on the District of Columbia.

By Mr. HALPERN:

H.R. 9705. A bill to provide express legislative authorization for the practice of striking medals commemorative of the Presidents of the United States, the Secretaries of the Treasury, and the Directors of the Mint, and to provide for the initiation of this practice with respect to the Treasurers of the United States; to the Committee on Banking and Currency.

H.R. 9706. A bill to amend section 620 of title 38, United States Code, to authorize direct admission to community nursing homes of those veterans needing such care for a service-connected condition; to the Committee on Veterans' Affairs.

H.R. 9707. A bill to amend section 620 of title 38, United States Code, to authorize an extension of the 6-month limitation on the furnishing of nursing home care in the case of veterans who pay a part of the cost of such care; to the Committee on Veterans' Affairs.

H.R. 9708. A bill to amend title 38 of the United States Code to authorize the Administrator of Veterans' Affairs to contract with the military departments for the furnishing of certain medical care to veterans in nursing homes; to the Committee on Veterans' Affairs.

H.R. 9709. A bill to direct the Secretary of the Army to provide memorial plots in national cemeteries for certain former members of the Armed Forces and to permit the adjacent burial of certain family members of such former members; to the Committee on Veterans' Affairs.

By Mr. HANLEY (for himself, Mr. BINGHAM, Mr. BLANTON, Mr. ANDERSON of Tennessee and Mr. STRATTON):

H.R. 9710. A bill to provide for an equitable procedure for establishing congressional districts; to the Committee on the Judiciary.

By Mr. HENDERSON (for himself, Mr. DAVIS of Georgia, Mr. DENHOLM, and Mr. RANGEL):

H.R. 9711. A bill concerning legal counsel of recipients of loans under programs administered by the Department of Agriculture; to the Committee on Agriculture.

By Mr. LUJAN (for himself and Mr. RUNNELS):

H.R. 9712. A bill to authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developments; to the Committee on Interior and Insular Affairs.

By Mr. McMILLAN:

H.R. 9713. A bill to amend the District of Columbia Minimum Wage Act to exempt from the overtime provisions of that act certain employees whose maximum hours are regulated by the Secretary of Transportation under the Interstate Commerce Act; to the Committee on the District of Columbia.

By Mr. MORSE:

H.R. 9714. A bill to amend title 5, United States Code, to remove the prohibition on the concurrent payment of compensation for disability on account of a civilian work injury and of retired pay for a different disability incurred in service with the U.S. Armed Forces, and for other purposes; to the Committee on Post Office and Civil Service.

H.R. 9715. A bill to amend the Trade Expansion Act of 1962 to provide that the Tariff Commission shall be deemed to make affirmative findings with respect to tariff adjustment and adjustment assistance investigations if the Commissioners voting thereon are evenly divided; to the Committee on Ways and Means.

By Mr. SISK:

H.R. 9716. A bill to amend section 504(a) of the Internal Revenue Code, as amended, to provide for an increase in the amount of carbon dioxide that may be contained in still wines; to the Committee on Ways and Means.

By Mr. STOKES:

H.R. 9717. A bill to provide for the establishment of the Thaddeus Kosciuszko Home National Historic Site in the State of Pennsylvania, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. THOMPSON of Georgia:

H.R. 9718. A bill to amend the Communications Act to establish conditions upon which competing applications may be considered for authorizations specified in pending renewal applications; to the Committee on Interstate and Foreign Commerce.

By Mr. THOMPSON of New Jersey:

H.R. 9719. A bill to amend the National Foundation on the Arts and Humanities Act of 1965 to further cultural activities by making unused railroad passenger depots available to communities for such activities; to the Committee on Education and Labor.

H.R. 9720. A bill to establish a National Film Center and Archive; to the Committee on House Administration.

By Mr. VAN DEERLIN:

H.R. 9721. A bill to amend the Communications Satellite Act of 1962 and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. BENNETT:

H.R. 9722. A bill to authorize a study to determine the feasibility of developing a small boat channel in the Mill Cove area of Jacksonville, Fla.; to the Committee on Public Works.

By Mr. GRAY:

H.R. 9723. A bill to amend Public Law 89–759, 89th Congress (80 Stat. 1308) (D.C. Temporary Heliport bill); Public Law 90–9264, 90th Congress (1968) (Visitors' Center bill) and the Federal Aviation Act of 1958, as amended (72 Stat. 754 as amended by 76 Stat. 143, 49 U.S.C. 1371; 72 Stat. 758 as amended by 74 Stat. 445, 49 U.S.C. 1373; 72 Stat. 760, 49 U.S.C. 1374; 72 Stat. 788, 49 U.S.C. 1482); to the Committee on Public Works.

By Mr. KYROS:

H.R. 9724. A bill to provide financial assistance for the construction and operation of senior citizens' community centers, and for other purposes; to the Committee on Education and Labor.

By Mr. MORSE (for himself, Mrs. ABZUG, Mr. ANDERSON of Tennessee, Mr. ANDERSON of Illinois, Mr. BADILLO, Mr. BELL, Mr. BIAGGI, Mr. BINGHAM, Mr. BOLAND, Mr. BADEMAS, Mr. BURTON, Mr. CORMAN, Mr. DELLUMS, Mr. DRINAN, Mr. FRENZEL, Mr. GALLAGHER, Mr. GUDE, Mr. HALPERN, Mr. HARRINGTON, Mr. KASTENMEIER, Mr. KOCH, Mrs. MINK, Mr. MITCHELL, and Mr. MOSHER):

H.J.Res. 775. Joint resolution limiting military assistance and military sales to Pakistan; to the Committee on Foreign Affairs.

By Mr. MORSE (for himself, Mr. Moss, Mr. NIX, Mr. PODELL, Mr. RIEGLE, Mr. REUSS, Mr. ROYBAL, Mr. ROBISON of New York, Mr. ROE, Mr. ROSENTHAL, Mr. RYAN, Mr. SARBANES, Mr. SCHEUER, Mr. STEIGER of Wisconsin, Mr. STOKES, Mr. VANIK, Mr. WALDIE, and Mr. CHARLES H. WILSON):

H.J. Res. 776. Joint resolution limiting military assistance and military sales to Pakistan; to the Committee on Foreign Affairs.

By Mr. WHITEHURST:

H.J. Res. 777. Joint resolution proposing an amendment to the Constitution of the United States relating to open admissions to public schools; to the Committee on the Judiciary.

By Mr. FRASER:

H. Res. 531. Resolution to express the sense of the House of Representatives on the suspension of Greece from membership in NATO until Greece demonstrates implementation of article 2 of the North Atlantic Treaty, which emphasizes peaceful international relations achieved through strong free institutions; to the Committee on Foreign Affairs.

By Mr. HALPERN (for himself, Mr. BURKE of Massachusetts, and Mr. GOLDWATER):

H. Res. 532. Resolution expressing the sense of the House with respect to the negotiation of an American-Israeli Treaty of Friendship; to the Committee on Foreign Affairs.

By Mr. HAYS:

H. Res. 533. Resolution to provide for additional compensation for the officers and employees of the Office of the Speaker of the House of Representatives; to the Committee on House Administration.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

241. By the SPEAKER: Memorial of the House of Representatives of the Commonwealth of Massachusetts, relative to Congress appropriating the full funding authorized by the Lead-Based Paint Poisoning Prevention Act of 1971; to the Committee on Appropriations.

242. Also, memorial of the House of Representatives of the Commonwealth of Massachusetts, urging the Government of North Vietnam to withdraw all Communist troops from South Vietnam, Laos and Cambodia and to release forthwith American prisoners of war; to the Committee on Foreign Affairs.

243. Also, memorial of the Legislature of the State of Alabama, relative to ratifying the proposed amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age and older; to the Committee on the Judiciary.

244. Also, memorial of the Legislature of the State of California, relative to Federal disaster relief funds; to the Committee on Public Works.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CHAMBERLAIN:

H.R. 9725. A bill for the relief of Moon Soo Park; to the Committee on the Judiciary.

By Mr. ICHORD:

H.R. 9726. A bill for the relief of Eddie Byrd; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

101. By the SPEAKER: Petition of Henry Stoner, York, Pa., relative to statehood for Puerto Rico; to the Committee on Interior & Insular Affairs.

102. Also, petition of Romualdo Maturan, Mindanao, Philippines, relative to redress of grievances; to the Committee on the Judiciary.

EXTENSIONS OF REMARKS

DAVENPORT AND "SATCH"

HON. FRED SCHWENGEL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 12, 1971

Mr. SCHWENGEL. Mr. Speaker, while the Nation and the world mourn the death of Louis Armstrong, those of us from Davenport feel a special loss because of his early ties to this area. A recent article and editorial in the Davenport Times-Democrat discuss these early ties to Davenport.

The article follows:

DAVENPORT AND "SATCH"

(By Bill Wundram)

He was a shy, fat-faced young man, and he carried his cornet in a paper bag when he first saw Davenport, but Satchmo Armstrong never forgot this river city.

"I always called it showboat town," Satchmo grinned whenever he'd visit Davenport in later years.

No one ever heard of Louis Armstrong when he tooted his horn in Davenport in the early 1920s, but in his own way he was making the foot of Brady Street a bit of Bourbon Street.

Some of Satchmo's most colorful days hark back to Davenport. Here, he joined the Streckfus Excursion Boat Line. The Streckfus Line wintered in Credit Island Harbor, and headquartered in Rock Island in those palmy days of the river.

"Every spring for years I'd come to Davenport and get on those big boats like the St. Paul and the Sidney, and what a wild time we'd have all summer long," Satchmo recollected during one concert date visit here a few years ago.

Satchmo was playing with the legendary Fate Marable's band aboard the Streckfus boats, and received $15 a week, with room and board. One steamy August morning, on a run to Dubuque, and while the rest of the musicians were still sleeping, Satchmo especially remembered writing a song.

"It was 'I Wish I Could Shimmy Like My Sister Kate.' Gosh, I didn't think it was anything and I sold it for 50 bucks."

Armstrong seemed to have perfect recall about Davenport.

"I remember always starting out the riverboat season in Davenport. Sometimes I'd go down to the levee. I remember it was brick, and pretty steep. (This was the era when the Davenport levee was a real levee, and not a mass parking lot).

"Most of the time, though, the band guys would take some roads out into the country and climb on the Streckfus boats in a harbor." (He was referring to Credit Island Harbor, where as many as a half-dozen Streckfus boats wintered).

Satchmo had special memories of Davenport's chilly spring weather. "Man, it was always cold when I'd get on the boat in Davenport. I think it was so cold that once I stood on the deck and told Capt. Streckfus that I would have to blow my horn to crack the ice so we could get out of that harbor."

HIS HORN STILLED

NEW YORK.—Louis "Satchmo" Armstrong, beloved troubadour of the jazz trumpet, with a delightful rasp to his voice and roll to his eye, died Tuesday, his heart worn out, his golden horn silent at last. He was 71 years old on Sunday.

"Me and my horn, we come a long way together," Armstrong once observed.

Together, they came out of a waif's refuge in New Orleans, upriver to Chicago along the trail of jazz itself, then on to the show business pinnacles of New York and Las Vegas, and the motion picture studios of Hollywood.

And before they were through, Armstrong and his horn, together, had fascinated millions on five of the earth's continents, enthralling both the humble and the royal.

Armstrong and his horn pierced even the Iron Curtain, as he became one of the best ambassadors the United States ever sent abroad, a representatives of democracy whose portfolio's contents, in his words, "ain't politics, it's just music."

"In Africa," Armstrong once reminisced, "the local tribe carried in their chief to where I was playing. All he did was just look down and say just one word, 'Satchmo!' Man, they knew me even there."

THE GREAT "SATCHMO"

Quad-Citians and the rest of the world lost a friend Tuesday. He was Louis (Satchmo) Armstrong who blew his trumpet and with a gravelly voice sang his way into the hearts of millions across the world.

Along the way from a waif's home in New Orleans to a New York hospital where he was 71 Sunday "Satchmo" went from one-night stands in hamlets all across the nation to jazz concerts in most of the world's capitals.

"Satchmo" through the years played on excursion boats in the Quad-City area and became a familiar sound and sight to thousands in eastern Iowa and western Illinois.

There was about him a warm quality and an easy smile that made one relax in his presence. Yet he was such a giant in the musical world that it was a bit surprising to discover he was short in physical stature—a little under 5 foot 6.

As a jazzman "Satchmo" never put on airs. "Look, you don't pose, never. That's the last thing you do, because the minute you do you're through as a jazzman. Maybe not as a musician. But jazz is only what you are."

Another time, he said: "I play the trumpet and that's for me. There are only two kinds of music—good and bad. We (referring to himself) try to play good music."

When Armstrong turned three-score-and-ten on the Fourth of July in 1970, he said, "I'm happy. Every time I wake up it's a good day and I feel in the pink. It's awful nice to be breathing on your 70th birthday, let alone feeling in the pink."

On that same occasion he played a recording of one of his early trumpet solos and had this to say: "Ain't nobody played nothing since, and can't nobody play nothing like it now."

That could be his epitaph and as long as old records, movies and television films and the printed word are around to give witness to his talents that epitaph will stand.

THE ARIZONA INDIANS

HON. BARRY GOLDWATER

OF ARIZONA

IN THE SENATE OF THE UNITED STATES

Monday, July 12, 1971

Mr. GOLDWATER. Mr. President, Arizona Progress, the monthly publication of the Valley National Bank in Arizona, contains in its June–July 1971 issue a very concise and interesting resume of Arizona's Indians and how they are progressing. I ask unanimous consent that the article be printed in the Extensions of Remarks.

There being no objection, the article was ordered to be printed in the RECORD as follows:

ARIZONA'S INDIANS: AMERICANS BEFORE COLUMBUS

The first Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, wealth—the condition of the Indian people ranks at the bottom.

But, the story of the Indian in America is something more than the record of white man's frequent aggression, broken agreements, intermittent remorse and prolonged failure. It is a record also of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contribution to this country—to its art and culture, to its strength and spirit, to its sense of history and its sense of purpose.—President Nixon, Message to Congress, July 8, 1970.

Arizona is Indian Country. Within the state's borders are 19 reservations covering about 31,000 square miles, or more than 27% of the total land area in Arizona. By comparison, land held in private hands accounts for